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FCC Record

A comprehensive compilation of decisions, reports, public notices and other documents of the Federal Communications Commission of the United States.

FEDERAL COMMUNICATIONS COMMISSION

Dennis R. Patrick, Chairman

James H. Quello

Patricia Diaz Dennis

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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-551

In re Applications of

SPANN COMMUNICATIONS
Surry, Virginia
Req: 670 kHz, 10kW (5kW-CH) DA-2, D — FILE NO. BP-860922AF

DAVID H. MORAN d/b/a KITTY HAWK RADIO
Kitty Hawk, North Carolina
Req: 670 kHz, 5kW, DA-D — FILE NO. BP-870601AB

ULTIMATE HIGH FIDELITY MEDIUM
Claremont, Virginia
Req: 670 kHz, 20kW, (5kW-CH), DA-D — FILE NO. BP-870601AE

David H. Moran d/b/a MIDLOTHIAN RADIO
Midlothian, Virginia
Req: 670 kHz, 4kW, DA-D — FILE NO. BP-870601AC (DISMISSED HEREIN)

For Construction Permit

HEARING DESIGNATION ORDER

Adopted: November 28, 1988; Released: January 17, 1989

By the Chief, Audio Services Division:

1. The Commission, by the Chief, Audio Services Division, acting pursuant to delegated authority, has under consideration the above-captioned mutually exculsive applications of Spann Communications (Spann), David H. Moran d/b/a Kitty Hawk Radio (Kitty Hawk), Midlothian Radio (Midlothian) and Ultimate High Fidelity Medium (Ultimate) for new AM broadcast stations. Also before us is a request for waiver of Section 73.37 of the Commission's Rules filed by Ultimate. In addition, we are in receipt of a "Petition to Deny", filed by Durham Life Broadcasting, Inc. (Durham), licensee of AM station WPTF, Raleigh, North Carolina, and directed at the Kitty Hawk application.

2. *SPANN COMMUNICATIONS*. Spann's proposed 0.5 mV/m contour will overlap with the 0.5 mV/m contour of first adjacent station WCBM, Baltimore, Maryland. Unlike Ultimate, Spann did not request a waiver of Section 73.37 of the Commission's Rules. However, we have determined that the overlap exists because of a salt water path and does not involve the primary service area of either station. Accordingly, a waiver of Section 73.37 of our rules will be granted.

3. Spann has failed to provide in its application a narrative program service statement as required by Section IV of FCC Form 301. Also, the application does not include an EEO Program as required by Section VI of FCC Form 301. Consequently, Spann will be required to file the appropriate amendments with the presiding Administrative Law Judge within 30 days of the release of this Order.

4. Spann reports in its application character issues specified in other proceedings and left unresolved by dismissal of the applications in question. The proposals were those of Midway Broadcasting Company for a new AM station at Maywood-Chicago, Illinois (File No. BP-801105AC) and Minority Broadcasting Company of the Midwest, Inc., for a new AM station at Warrington, Pennsylvania (File No. BP-811124AA). Pervis Spann, Spann Communications' sole principal, was a principal in each applicant. The issues specified included inquiries into failures to report and misrepresentations as to the applicants' engineering showings.

5. In arguing that these issues need not be brought into this proceeding and litigated here, Spann Communications attributes its failure to report to a lack of knowledge on its principal's part. The alleged misrepresentations, it argues, were not in fact misrepresentations at all. Rather, Spann Communications claims, the applicants were using the technical showings of another - a practice which the Commission has specifically found not to raise substantial issues concerning qualifications - under circumstances where this use was apparent from an examination of the showings as a whole.

6. We find Spann Communications' explanation for the most part persuasive, and will require further litigation of only one of the issues. We note in this regard, as Spann Communications emphasizes, that Minority Broadcasting was not represented by counsel in the Warrington proceeding and did not respond to the motion to enlarge issues. Its explanation here satisfies us that no misrepresentation occured. With respect to the Maywood-Chicago proceeding, the presiding Administrative Law Judge there specifically found that Midway Broadcasting had reported all interests elsewhere and that the applicant had not willfully violated U.S. copyright laws in connection with its application. At the same time, though, he acknowledged that Minortiy Broadcasting had been found by a U.S. District Court to have misrepresented the identity of its consulting engineer in an application filed with the Commission. This finding, he concluded, warranted specification of an issue. *Midway Broadcasting Co.*, FCC 84M-3152, Mimeo No. 6674, released July 18, 1984. Given the central role that truthfulness plays in our regulatory scheme, we too cannot dismiss the judicial findings of misrepresentation without further inquiry. Hence we will add the issue specified in the Maywood-Chicago proceeding to this proceeding.[1]

7. We will also authorize an inquiry into Pervis Spann's conduct in matters relating to the application of Minority Broadcasting Company of the Midwest, Inc., for a new AM station at Memphis, Tennessee. An explanation follows, drawn from findings and conclusions set forth in a Memorandum Opinion and Order, *RKO General Inc. (WHBQ - TV)*, FCC 85M-4936, released December 18, 1985, and a Partial Initial Decision in that same proceeding, FCC 86D-32, released May 2, 1986.[2]

8. Minority Broadcasting's Memphis application was originally designated for a comparative hearing with the mutually exclusive application of Gilliam Communications, Inc., to modify the facilities of its station WLOK in Memphis. Minority Broadcasting then filed a petition to enlarge issues urging among other things that the Gilliam proposal was a strike application. Submitted in support of its request was the affidavit of one Daryl Williams, swearing to payola practices at station WLOK. Before the petition to enlarge issues was resolved by the presiding Administrative Law Judge, Gilliam withdrew its application and Minority Broadcasting, of which Pervis Spann is president, director and majority shareholder, was awarded the construction permit and later license for station WXSS in Memphis.

9. When Gilliam Communications' president and majority stockholder filed, through a subsidiary, an application for a television station in Memphis mutually exclusive with that of RKO General, Inc., for renewal of license for station WHBQ-TV. RKO sought and was able to bring the unresolved strike application issue into that proceeding. In conncection with its litigation, the same Daryl Williams submitted a second affidavit disclaming his first statement and swearing that Pervis Spann had paid him to sign the false affidavit. Upon advice of counsel, Mr. Williams subsequently refused to testify. The strike issue was tried without this evidence and resolved in Gilliams' favor.

10. We are left then with an unresolved allegation that Pervis Spann purchased and submitted a false statement to the Commission. That such conduct, if established, would call into question the probability of Spann Communications' performing truthfully and reliably as a licensee is a proposition too obvious to require elaboration. An apropriate issue will be specified. [3]

11. *KITTY HAWK RADIO.* A petition to deny has been filed by Durham alleging that Kitty Hawk's proposed antenna system, when varied 5 percent in current field ratio and 3 percent in phase system, would cause objectionable interference to the operations of Station WPFT. Durham requests that we deny Kitty Hawk's application or designate a critical array issue. It is our policy to consider as being generally stable directional arrays which do not exceed their radiation limits with 1.0 percent current ratio variation and 1.0 degree phase deviation. We consider those arrays which exceed their radiation limits with parameter variations of 0.1 percent and 0.1 degree highly unstable. Where arrays exceed their radiation limits within these parameter variations, we will condition a grant accordingly. Our computerized studies here indicate that Kitty Hawk's proposal would exceed specified standard radiation values with variations of 1.0 percent current ratio deviation and 1.0 degree phase deviation. Thus, the proposal falls into the category where stability conditions are called for. To this extent, we will grant Durham's pleading.[4]

12. *MIDLOTHIAN RADIO.* David H. Moran (Moran) the sole principal of this applcant is also the sole principal of Kitty Hawk Radio. Our studies indicate that Moran's proposals at Kitty Hawk, North Carolina and at Midlothian, Virginia are directly in conflict with each other. By filing two such applications, Moran is in violation of Sections 73.3518 of the Commission's Rules pertaining to inconsistent and conflicting applications.[5] We will therefore dismiss the application of Midlothian Radio at Midlothian, Virginia, the later filed application determined by virtue of the suffix attached to Midlothian (BP-870601 *AC*) as opposed to the Kitty Hawk application (BP-870601 *AB*).

13. *ULTIMATE HIGH FIDELTY MEDIUM.* The applicant has requested a waiver of Section 73.37 of the Commission's Rules to allow its proposed 0.5 mV/M contour to overlap the 0.5 mV/M contour of the first adjacent station WCBM, Baltimore, Maryland. The waiver is justified because the contour overlap occurs due to a salt water path and is outside of the primary service area of both stations.

14. Ultimate did not provide in its EEO program a minority organization it will contact as required by Section VI of FCC form 301. Consequently, Ultimate will be required to file an appropriate amendment with the presiding Administrative Law Judge within 30 days of the release of this Order.

15. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify an issue to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which proposal, or combination of proposals, would best provide a fair, efficient and equitable distribution of radio service. We will also specify a contingent comparative issue should such an evaluation of the proposals prove warranted.

16. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order upon the following issues:

1. To determine whether Pervis Spann, as a principal of Midway Broadcasting Company, misrepresented in an application for a new broadcast station at Maywood-Chicago, Illinois, the identity of its consulting engineer, and, in light of the evidence adduced, whether Spann Communications possesses the basic qualifications to be a Commission licensee.

2. To determine whether Pervis Spann paid Daryl Williams to sign a false affidavit which Minority Broadcasting of the Midwest, Inc., filed with the Commission in a proceeding involving mutually exclusive proposals for a Memphis, Tennessee, broadcast station and, in light of the evidence adduced, whether Spann Communications possesses the basic qualifications to be a Commission licensee.

3. To determine: (a) the areas and populations which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations, and (b) in light hereof and purusant to Section 307(b) of the Communications Act of 1934, as amended, which proposal, or combination of proposals, would best provide a fair, efficient and equitable distribution of radio service.

4. To determine, in the event it is concluded that a choice among the applicants should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

17. IT IS FURTHER ORDERED, That Section 73.37 of the Commission's Rules IS WAIVED as it applies to the overlap between the proposals of Ultimate and Spann and WCBM.

18. IT IS FURTHER ORDERED, That Spann Communications shall file the amendments specified in paragraph 3 above, with the presiding Administrative Law Judge within 30 days of the release of this Order.

19. IT IS FURTHER ORDERED, That should Kitty Hawk Radio's application be granted, the construction permit shall contain the following condition:

An antenna monitor of sufficient accuracy and repeatability, and having a minimum resolution of 0.1 degree phase deviation and 0.1 percent sample current ratio deviation, shall be installed and continuously available to indicate the relative phase and magnitude of the sample currents of each element in the array to insure maintenance of the radiated fields within the standard pattern values of radiation.

Upon the receipt of operating specifications and before issuance of license, the permitee shall submit the results of observations made daily of the base currents and their ratios, relative phase, sample currents and their ratios and sample current ratio deviations for each element of the array along with the final amplifier plate voltage and current, the common point current, and the field strengths at each monitoring point for both the nondirectional and directional nighttime operation for a period of a least thirty days, to demonstrate that the array can be maintained within the specified tolerances.

20. IT IS FURTHER ORDERED, That the application of Midlothian Radio filed by David H. Moran at Midlothian, Virginia IS DISMISSED.

21. IT IS FURTHER ORDERED, That Ultimate High Fidelty Medium file an amendment to provide an additional minority organization which it will contact as part of its EEO Program with the presiding Administrative Law Judge within 30 days of the release of this Order.

22. IT IS FURTHER ORDERED, That the petition filed by Durham Life Broadcasting, Inc., IS GRANTED to the extent indicated herein and IS DENIED in all other respects.

23. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

24. IT IS FURTHER ORDERED, That to avail themselves of the opportunity to be heard and pursuant to Section 1.22(c) of the Commission's Rules, the applicants shall, within 20 days of the mailing of this Order, in person or by attorney, file with the Commission, in triplicate, written appearances stating an intention to appear on the dates fixed for the hearing and to present evidence on the issues specified in this Order.

25. IT IS FURTHER ORDERED, That, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed by the Rule, and shall advise the Commission of the publication of such as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief,
Audio Services Division
Mass Media Bureau

FOOTNOTES

[1] That issue read in pertinent part as follows: Whether Pervis Spann misrepresented to the FCC that E. Harold Munn, Jr. & Associates was the consulting engineer for Minority Broadcasting Company of the Midwest, Inc.

[2] Given that Pervis Spann was not technically a party to this proceeding, we will not specify an issue addressing his failure to report it here.

[3] These same issues were added against Spann Communications in MM Docket No. 87-16 2 FCC Rcd 1200 (1987). However, a settlement in that hearing precluded that resolution of the issues against Spann.

[4] Where other factors internal and/or external to the array warrant it, a hearing issue may be specified. Such circumstances, however, have not been established here.

[5] Section 73.3518 of the Commission's Rules states in pertinent part while an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by or on behalf of or for the benefit of the same applicant, successor or assignee.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-557

In re Applications of

WESTERN INDIAN MINISTRIES, INC. File No. BP-870929AN
KHAC, Tse Bonito, New Mexico

Has: 1110 kHz, 10 kW, D (Window Rock)
Req: 880 kHz, 0.43 kW, 10 kW-LS, U
(Tse Bonito)

MESA BROADCASTING COMPANY File No. BP-880328AG
KQIL, Orchard Mesa, Colorado

Has: 1340 kHz, 1 kW, U (Grand Junction)
Req: 880 kHz, 4.5 kW, 10 kW-LS, DA-N, U
(Orchard Mesa)

For Construction Permits

HEARING DESIGNATION ORDER

Adopted: December 2, 1988; Released: January 17, 1989

By the Chief, Audio Services Division:

1. The Commission, by the Chief, Audio Services Division, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications of Western Indian Ministries, Inc. (Western) and Mesa Broadcasting Company (Mesa).

2. Mesa requests a waiver of the power limit of Section 73.21(a) (2)(ii)(c), so as to operate a nighttime power of 5 kW instead of the 1 kW prescribed by that provision. As Mesa has established that higher power is necessary to achieve coverage of its communities of license and will not preclude significantly future use of the frequency, a waiver is justified.

3. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed.[1] However, since the proposals are for different communities, we will specify an issue to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which proposal or combination of proposals, would better provide a fair, efficient, and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

4. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine: (a) the areas and populations which would gain or lose primary aural service from the proposals and the availability of other primary service to such areas and populations, and (b) in light thereof and pursuant to Section 307(b) of the Communications Act of 1934, as amended, which proposal would better provide a fair, efficient and equitable distribution of radio service.

2. To determine in the event it is concluded that a choice among the applicants should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

5. IT FURTHER ORDERED that Mesa's waiver request IS GRANTED.

6. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

7. IT IS FURTHER ORDERED, That to avail themselves of an opportunity to be heard, the applicants shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

8. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

[1] Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2 Rio de Janeiro 1981 and to bilateral and other multilateral agreements between the United States and other countries.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-560

In re applications of

LAVOZ BROADCASTING COMPANY, INC. BP-880113AF
Santa Fe, New Mexico

Req: 1550 kHz, 0.26 kW, 36 kW-LS
(28 kW-CH) DA-N, U

RADIO PROPERTY VENTURES BP-880428AA
KQXI, Arvada, Colorado

Has: 1550 kHz, 10 kW, D
Req: 1550 kHz, 10 kW, DA-N, U

For Construction Permit

HEARING DESIGNATION ORDER

Adopted: December 6, 1988; Released: January 17, 1989

By the Chief, Audio Services Division:

1. The Commission, by the Chief, Audio Services Division, acting pursuant to delegated authority, has under consideration the mutually exclusive applications of LaVoz Broadcasting Company, Inc. (LaVoz), and Radio Property Ventures (Radio).

2. The engineering portion of the LaVoz and Radio applications are missing the required site photos. To remedy this deficiency, LaVoz and Radio will be required to file appropriate amendments with the presiding Administrative Law Judge within 30 days of the release of this Order.

3. *LaVoz Broadcasting Company, Inc.* LaVoz's proposed nighttime interference-free contour would not encompass the entire community of Santa Fe, New Mexico in contravention of Section 73.24 (j) (the coverage requirement) of our Rules. Consequently, LaVoz has requested a waiver of this provision. In addition, LaVoz notes that its nighttime interference-free contour contains 74% of Santa Fe's population which is predominately Hispanic. It should be noted that the principles of LaVoz are Hispanic and its programming is primarily directed to the Hispanic community. Based on information submitted we cannot determine if a waiver of the rules is warranted and an appropriate issue will be specified.

4. Our review of Radio's engineering showing reveals several deficiences in its application. Radio has failed to provide data in relation to the tabulation of the antenna pattern in the vertical at the angles of elevation from 35° to 60°. In addition, data regarding the proposed ground system including the length of radials to be used was not submitted. Radio should submit the above data reflected in a clarifying amendment filed with the presiding Administrative Law Judge within (30) days of the release of this Order.

5. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed. However, since the proposals are for different communities, we will specify an issue to determine pursuant to Section 307(b) of the Communication Act of 1934, as amended, which proposal, or combination of proposals, would best provide a fair, efficient, and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

6. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether, in light of the failure of the LaVoz Broadcasting Company proposal to comply with Section 73.24(j) of the Commission's Rules, circumstances exist which warrant waiver of that Section.

2. To determine: (a) the areas and populations which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations, and (b) in light thereof and pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals (or combination of proposals) would provide a fair, efficient and equitable distribution of radio service.

3. To determine, in the event it is concluded that a choice among the applicants should not be vased solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. IT IS FURTHER ORDERED, That Radio shall file an amendment to correct the engineering deficiences in its proposal, as specified in paragraph 5, with the presiding Administrative Law Judge within 30 days of the release of this Order.

8. IT IS FURTHER ORDERED, That LaVoz and Radio shall file an amendment to provide the information specified in paragraph 2 with the presiding Administrative Law Judge within 30 days of the release of this Order.

9. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

10. IT IS FURTHER OREDERED, That to avail themselves of the opportunity to be heard and pursuant to Section 1.221(c) of the Commission's Rules, the parties shall withing 20 days of the mailing of this Order, in person or by attorney, file with the Commission, in triplicate, written appearances stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

11. IT IS FURTHER ORDERED, That pursuant to Section 311(a) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed in the rules, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-562

In re Applications of

DON WERLINGER File No. BP-870331AD
Las Vegas, Nevada

Req: 1100 kHz, 1 kw, 50 kW-LS.DA-2, U

DON H. BARDEN File No. BP-870929AK
Las Vegas, Nevada

Req: 1100 kHz, 1 kW, 50 kW-LS, DA-2, U

LARRY L. CUMMINGS File No. BP-870929AM
Sun City - Youngstown, Arizona

Req: 1100 kHz, 1 kW, 50 kW-LS, DA-N, U

Peter V. Gureckis d/b/a File No. BP-870929AP
CAVE CREEK BROADCASTING
COMPANY
Cave Creek, Arizona

Req: 1100 kHz, 1 kW, 25 kW-LS, DA-2, U

Steven E. Brisker d/b/a File No. BP-870929AQ
TUCSON RADIO
Tucson Estates, Arizona

Req: 1110 kHz, 5 kW, DA-D

For Construction Permit

HEARING DESIGNATION ORDER

Adopted: December 8, 1988; Released: January 17, 1989

By the Chief, Audio Services Division:

1. The Commission, by the Chief, Audio Services Division, acting pursuant to delegated authority, has before it for consideration the above-captioned applications of Don Werlinger (Werlinger), Don H. Barden (Barden), Larry L. Cummings (Cummings), Peter V. Gureckis d/b/a Cave Creek Broadcasting Company (Cave Creek) and Stephen E. Brisker d/b/a Tucson Radio linked to each other through the presence of intervening interlocking proposals.[12] Also before the Commission are petitions to deny filed by Triple R Broadcasting, Inc., and Barden against the Werlinger application. [3]

2. The engineering portions of the Werlinger and Cummings applications do not contain the required site photos. To remedy this deficiency, Werlinger and Cummings will be required to file appropriate amendments with the presiding Administrative Law Judge within 30 days of the release of this Order.

3. Attempts to obtain Federal Aviation Administration (FAA) clearance through the Commission's Antenna Survey Branch and the applicant have been unsuccessful. Accordingly, since no determination has been received as to whether the antennas proposed by Werlinger would constitute a hazard to air naviagtion, an issue with respect thereto will be included and the FAA made a party to the proceeding.

4. Our review of Werlinger's engineering proposal reveals several deficiencies. We have determined that the nighttime interference free contour would be 10.8 mV/m. Werlinger has not submitted a map clearly indicating the city limits of Las Vegas and showing his proposed nighttime interference free coverage. Consequently Werlinger will be required to submit an amendment to the presiding Administrative Law Judge within 30 days of the release of this Order clearly showing the city limits of Las Vegas, his nighttime interference free contour and detailing the area and population of Las Vegas that will be covered by the relevant contour. The presiding Administrative Law Judge will then evaluate the coverage map submitted and specify any additional city coverage issue as appropriate.

5. Barden states that he will cover only 49.17% of Las Vegas with his nighttime interference free contour. Barden claims that greater coverage of Las Vegas is not achievable because of power limitations. Accordingly, Barden seeks a waiver of Section 73.24(j) of the Commission's Rules. Based on the information submitted by Barden we cannot determine if a waiver of this rule is warranted and an appropriate issue will be specified.

6. The engineering portion of the Cummings application does not contain an adequate antenna description i.e., guyed, self-supporting or triangular. In addition, Cummings must file a corrected standard pattern plot to show tower #4 spacing as 270 degrees instead of 180 degrees. These corrections should be submitted in an amendment filed with the presiding Administrative Law Judge within (30) days of the release of this Order.

7. Werlinger and Tuscon have not amended their applications to update their other broadcast interests since the time the applications were first filed. Section 1.65 of the Commission's Rules requires that an applicant promptly amend its application to report significant changes in informations furnished to the Commission. The Commission is aware of changes in ownership information which Werlinger and Tuscon have not reported in connection with their respective applications. Accordingly, Werlinger and Tuscon will be required to file amendments with the presiding Administrative Law Judge detailing the changes in their other broadcast interests which have occurred since the time they filed their respective applications.

8. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed. However, since the proposals are for different communities, we will specify an issue to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which proposal, or combination of proposals, would best provide a fair, efficient, and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

9. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to the application of Don Werlinger whether there is a reasonable possibility that the tower heights and locations proposed would constitute a hazard to air navigation.

2. To determine whether the proposal of Don H. Barden would provide coverage of the city sought to be served, as required by Section 73.24(j) of the Commission's Rules, and if not whether circumstances exist which warrant waiver of that section.

3. To determine: (a) the areas and populations which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations, and (b) in light thereof and pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals (or combination of proposals) would best provide a fair, efficient and equitable distribution of radio service.

4. To determine, in the event it is concluded that a choice among the applicants should not be based solely on considerations relating to Section 307(b) which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

10. IT IS FURTHER ORDERED That the Federal Aviation Administration IS MADE A PARTY to this proceeding.

11. IT IS FURTHER ORDERED, That Werlinger shall file an amendment to correct the engineering deficiencies specified in paragraphs 2 and 4 with the presiding Administrative Law Judge within 30 days of the release of this Order.

12. IT IS FURTHER ORDERED, That Barden shall file an amendment to provide the information specified in paragraph 5 with the presiding Administrative Law Judge within 30 days of the release of this Order.

13. IT IS FURTHER ORDERED, That Cummings shall file an amendment to provide the information specified in paragraphs 2 and 6 with the presiding Administrative Law Judge within 30 days of the release of this Order.

14. IT IS FURTHER ORDERED, That Werlinger and Tuscon shall file the amendments called for in paragraph 7 concerning their other broadcast interests, with the presiding Administrative Law Judge within 30 days of the release of this Order.

15. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N.W. Washington, D.C. 20554.

16. IT IS FURTHER ORDERED, That to avail themselves of the opportunity to be heard and pursuant to Section 1.221(c) of the Commission's Rules, the parties shall within 20 days of the mailing of this Order, in person or by attorney, file with the Commission, in triplicate, written appearances stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

17. IT IS FURTHER ORDERED, That pursuant to Section 311(a) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed in the rules, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTES

[1] Groups of this nature are commonly termed "daisy chains."

[2] Barden filed minor amendments to his application on July 27, 1988, August 31, 1988 and October 24, 1988. Cave Creek filed a minor amendment on July 11, 1988. These amendments fail to meet the requirements of Section 73.3522(a)(2) of the Commission's Rules. Under Section 1.65, however, good cause has been shown for the acceptance of these amendments.

[3] The petitions to deny filed by Triple R Broadcasting, Inc. and Barden are essentially petitions to specify issues. Since the Commission's *Report and Order* in re *Revised Procedures for the Processing of Contested Broadcasting Applications; Amendments of Part 1 of the Commission's Rules*, 72 FCC 2d 202 (1979), directed the deletion of all issue pleadings in pending cases, the matters sought to be raised in these petitions have not been considered. Accordingly, an opporunity to raise any allegations contained therein will be afforded the parties post-designation pursuant to Section 1.229 of the Commisssion's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-49

In re Applications of

SEATTLE PUBLIC SCHOOLS — File No. BRED-830922AQ

For Renewal of License
For Station KNHC(FM),
Seattle, Washington

and

JACK STRAW MEMORIAL FOUNDATION — File No. BPED-840103AR
Seattle, Washington

For Construction Permit
for a New FM Station

Appearances

Sally Katzen, Esquire, *Bruce Friedman*, Esquire, and *Margaret C. Tobey*, Esquire, on behalf of Seattle Public Schools; *Richard M. Riehl*, Esquire, *Michael H. Baker*, Esquire, and *John Crigler*, Esquire, on behalf of Jack Straw Memorial Foundation; and *Norman Goldstein*, Esquire, on behalf of the Chief, Mass Media Bureau, Federal Communications Commission.

DECISION

Adopted: December 14, 1988; Released: January 19, 1989

By the Review Board: MARINO (Chairman), BLUMENTHAL, ESBENSEN. Board Member BLUMENTHAL:

I. INTRODUCTION

1. In this proceeding, Seattle Public Schools (SPS) is seeking the grant of its 1984 renewal application for noncommercial educational broadcast Station KNHC-FM, Seattle, Washington, whereas Jack Straw Memorial Foundation (Straw) has filed a mutually exclusive application for that same facility. Following the *Initial Decision* (*I.D.*) of presiding Administrative Law Judge Joseph Chachkin (ALJ), 3 FCC Rcd 3028 (released May 27, 1988), which granted the SPS renewal application, Straw filed exceptions with the Review Board and SPS and the Mass Media Bureau filed reply exceptions. We have reviewed the *I.D.* in light of the pleadings, the oral argument heard October 21, 1988, and our independent examination of the record. We adopt the findings of fact and conclusions of law of the ALJ, except as modified herein, and affirm his ultimate grant of the SPS renewal application.[1]

2. This case arose when, on January 3, 1984, Straw filed an application for a Construction Permit to operate a noncommercial FM radio station on 89.5 MHz in Seattle, Washington, a frequency currently occupied by KNHC-FM, licensed to the Board of Directors of SPS. KNHC-FM, which has operated on that frequency since 1971, is physically located at Nathan Hale High School, one of ten Seattle public high schools. Straw is a nonprofit corporation which, from 1964 to 1984, operated KRAB-FM on commercial frequency 107.7 MHz, a station it was inspired to sell because of severe financial difficulties. Straw intended to use the proceeds from its sale of KRAB-FM as an endowment with which to fund a new radio station it hoped to settle on a Seattle noncommercial frequency. The problem for Straw, however, was that of the two noncommercial FM frequencies established in Seattle, both were occupied by ongoing broadcast operations.[2] Straw was recently granted a broadcast Construction Permit to operate a noncommercial FM station on 90.7 MHz at Everett, Washington, a community approximately 25-30 miles north of Seattle, but that station appears to be not yet operational.[3] Thus, Straw filed its application for 89.5 MHz, Seattle, to be mutually exclusive with the renewal application for KNHC-FM filed by SPS on September 22, 1983.

3. Although Straw's mutually exclusive application of January 1984 "was technically for full-time operation of the station," *I.D.* at para. 2, "Straw's stated goal in filing its application was to obtain a share-time arrangement" with SPS for the joint use of the subject frequency. *Seattle Public Schools*, 103 FCC 2d 862, 866 (1986)(*Hearing Designation Order*). Under the Commission's rules governing noncommercial FM stations, a station "'which does not operate 12 hours per day each day of the year, will be required to share use of the frequency' on which it operates." *Id.*, at 865-866 n.3 (quoting 47 CFR §73.561(b)). Because KNHC-FM had operated for an average of only 67 hours per week for seven months (September 1982 - April 1983) of the subject license term prior to the filing of Straw's January 1984 share-time application, the Commission designated Straw's application and the KNHC-FM renewal application for consolidated hearing to determine "whether the public interest would be served by a share-time arrangement between the renewal applicant and the share-time applicant rather than by the renewal applicant's continued, increased operating schedule." *Id.*, at 867.[4]

4. The *Hearing Designation Order* also specified financial and environmental issues against Straw. *Id.*, at 870. Straw petitioned for reconsideration of the Commission's designation order and argued that, although its January 1984 application was accompanied by its statement that "Jack Straw . . . is not seeking to displace the Seattle School Board as the licensed operator on the channel currently operated by KNHC," *Seattle Public Schools*, 60 RR 2d 1073, 1075 (1986)(*Memorandum Opinion and Order* modifying *Hearing Designation Order*), its share-time application was premised upon its view that Section 73.561(b) was a *per se* rule and that, with KNHC-FM having failed to operate for at least 12 hours per day each day during the license term, SPS would be required by the Commission to share-time on KNHC-FM with Straw. The Commission again rejected Straw's argument that Section 73.561(b) was a *per se* rule, but it did accept Straw's contention that its original application was tendered in alternative fashion; *i.e.*, if Straw was not granted time-

sharing on the subject frequency, then it was entitled, under the tenets of *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945), to a full comparative contest for the frequency itself. *Memorandum Opinion and Order*, 60 RR 2d at 1075. Accordingly, the Commission added the standard noncommercial comparative issue utilized when two competing applicants apply for a new noncommercial broadcast station. That issue, first contoured in *New York University*, 10 RR 2d 215 (1967), reads as follows[5]:

> To determine: (a) the extent to which the proposed operation of Jack Straw and the proposed operation of the School System will be integrated into the overall cultural and educational objectives of the respective applicants; (b) the manner in which the proposed operation of the Jack Straw and the proposed operation of the School System meet the needs of the community to be served; and (c) whether other factors in the record demonstrate that one applicant will provide a superior noncommercial radio broadcast service.

And, citing past policy,[6] the Commission also retained the previously designated time-sharing issue, which reads as follows[7]:

> To determine whether a share-time arrangement between the School System and Jack Straw would result in the most effective use of the specified channel and thus better serve the public interest, and, if so, the terms and conditions of the arrangement.

"The contingent environmental and financial issues were resolved in favor of Jack Straw in advance of the hearing." *I.D.* at para. 10. Neither SPS nor the Mass Media Bureau has excepted to the resolution of those two issues, and any such potential exceptions are therefore waived. 47 CFR §1.277(a). *See also Silver Star Communications - Albany, Inc.*, FCC 88R-60, released November 2, 1988 at para. 4 (and cases cited therein). Hence, those two issues are not before us.[8]

5. Upon consideration of the record as a whole, the ALJ determined that SPS was entitled to a renewal expectancy for KNHC-FM's "outstanding performance during the license term," *I.D.* at para. 294 (*see also id.*, paras. 268 *et seq.*). Under the standard noncommercial comparative issue, the ALJ found SPS superior to Straw on the question of which applicant would best integrate its proposed station into the educational and cultural objectives of each applicant. *Id.*, para. 308. He similarly favored SPS on the companion comparative question of which of the applicants would best meet the needs of the local Seattle community. *Compare id.*, paras. 309-311 (SPS "has diligently ascertained community needs" and its "promise to continue to ascertain needs and interests and to air programs responsive thereto is entitled to great weight) *with id.*, paras. 312-316 (Straw "has failed to establish that its proposal will meet the needs of the residents of Seattle for issue-responsive programming). In considering certain "other factors" under the comparative issue, the ALJ found that SPS was entitled to credit for its "community outreach" activities, *id.*, para. 317, and he refused to credit Straw for its proposal to provide a superior "comparative coverage" (first and second noncommercial service to 209 and 484 square miles, respectively, encompassing populations of 11,778 and 81,194 persons, respectively), because Straw failed to demonstrate that its technical proposal was feasible. *Id.*, paras. 318- 319. The ALJ further held that, even if Straw's technical proposal were feasible, any ensuing "comparative coverage" advantage would not outweigh SPS's overall superiority on the standard noncommercial comparative issue, *id.*, para. 320, and certainly could not overcome - in the end - SPS's strong renewal expectancy accruing from its meritorious license term performance. *Id.* As to the time-share issue, the ALJ found that SPS requires its current hours of operation in order to meet its educational objectives, *see id.*, paras. 323-326, and he refused to prescribe a time-share arrangement between SPS and Straw. The Mass Media Bureau supports the ALJ's conclusion that SPS is entitled to a strong renewal expectancy for KNHC-FM, but it shoulders Straw's exceptions to the *I.D.* to the extent that the ALJ failed to credit Straw's "comparative coverage" proposal. Notwithstanding, the Mass Media Bureau believes that any such latter credit would not be of decisional significance in the face of the SPS renewal expectancy for KNHC-FM. Conversely, Straw's exceptions contend (1) that it should have been awarded a dispositive preference for its "comparative coverage" under either the standard noncommercial comparative or time-share issues; (2) that the ALJ misapplied the noncommercial comparative criteria and that Straw should have been awarded a decisive credit for its proposal to provide "alternative" programming; (3) that SPS is not entitled to a renewal expectancy for its past performance or comparative credit for its current proposal; and (4) that time-sharing would serve the public interest.

6. As the ALJ observed, this is a case of first impression. While both the Commission and this Board have experienced many comparative contests between applicants for new broadcast stations on frequencies specifically reserved for noncommercial applicants, *see, e.g., Cleveland Board of Education*, 87 FCC 2d 9 (1981); *New York University*, 10 RR 2d 215 (1967)(hearing designation order), 19 FCC 2d 358 (Rev. Bd. 1969)(decision); *Black Television Workshop of Santa Rosa, Inc.*, 65 RR 2d 34 (Rev. Bd. 1984); *Southeastern Bible College, Inc.*, 85 FCC 2d 936 (Rev. Bd. 1981), *review denied*, FCC 82-271, released June 11, 1982; *Pacifica Foundation*, 21 FCC 2d 216 (Rev. Bd. 1970), as well as comparative contests between commercial renewal applicants and challengers for the same frequency, *see, e.g., Radio Station WABZ, Inc.*, 90 FCC 2d 818 (1982), *aff'd sub nom. Victor Broadcasting, Inc. v. FCC*, 722 F.2d 756 (D.C. Cir. 1983); *Cowles Broadcasting, Inc.*, 86 FCC 2d 993 (1981), *aff'd sub nom. Central Florida Enterprises, Inc. v. FCC*, 683 F.2d 503 (D.C. Cir. 1982), *cert. denied*, 460 U.S. 1084 (1984); *Tele-Broadcasters of California, Inc.*, 58 RR 2d 223 (Rev. Bd. 1985); *Pillar of Fire*, 99 FCC 2d 1256 (Rev. Bd. 1984), *review denied*, 2 FCC Rcd 519 (1987); *Intercontinental Radio*, 98 FCC 2d 608 (Rev. Bd. 1984), *modified*, 100 FCC 2d 817 (1985); *Kaye-Smith Enterprises*, 98 FCC 2d 675, *recon. denied*, 98 FCC 2d 670 (Rev. Bd. 1984), *review denied*, FCC 85-192, released April 19, 1985, *aff'd by judgment subnom. Hoffart v. FCC*, 787 F.2d 675 (D.C. Cir. 1986), there has been no prior case in which the Commission has been called upon to compare an incumbent noncommercial renewal applicant as against a new competing applicant for that same frequency, on either a total or a time-share basis.[9] Hence, whereas the briefs before us are uncommonly well-

drafted, some of the more fundamental decisional issues are not perfectly joined, owing no doubt to the absence of direct precedent which would provide an accepted analytical framework within which the contending parties might clash. There is, for conspicuous example, not the slightest agreement between the applicants on the elements to be considered toward a potential renewal expectancy for noncommercial broadcasters. Straw contends that the *sine qua non* for a noncommercial broadcaster is the provision of "alternative" programming, and it faults KNHC-FM for operating with a popular music entertainment format. For its part, SPS leans greatly on the use of its station as a vocational training classroom for students interested in future radio careers. There is also a sharp dispute over whether a "comparative coverage" advantage is even cognizable in a noncommercial comparative renewal setting, let alone the dispositive factor Straw submits. Because we find that both parties, as well as the ALJ in some respects, have misapprehended the Commission's regulatory policies regarding noncommercial stations and/or the appropriate elements for comparison, we attempt below to sort out the issues and imprint existing Commission policy and precedent on the principal matters in dispute. While we ultimately affirm the conclusion of the ALJ on the award of a strong renewal expectancy to KNHC-FM, we differ somewhat with his reasoning, and we differ as well with certain of his conclusions under the standard noncommercial comparative issue; the I.D., therefore, is modified as indicated herein.

II. RENEWAL EXPECTANCY

7. Although neither the Commission's original *Hearing Designation Order* nor its reconsideration *Memorandum Opinion and Order* included a specific renewal expectancy issue, *compare Empire State Broadcasting Corp.*, 2 FCC Rcd 2793 (1987)(revised comparative hearing designation order adding specific renewal expectancy issue), the ALJ imputed a renewal expectancy issue into his comparative deliberations, based upon the reasoning of the Commission and the court in *Central Florida Enterprises, supra. See I.D.*, para. 268. In so doing, the ALJ found that the compound rationale for awarding a renewal expectancy to a noncommercial applicant that had rendered meritorious service in its past license term was as applicable here as in the commercial milieu: (1) to reward meritorious performance; (2) to encourage investments in quality service; and (3) to foster stability in the broadcast industry. *Id.*, para. 269. Moreover, as we recently observed in *Video 44*, 3 FCC Rcd 3587, 3592 (Rev. Bd. 1988), the courts have held for more than half a century that:

> It is not consistent with true public convenience, interest, or necessity, that meritorious stations . . . should be deprived of broadcasting privileges when once granted to them, which they have at great cost prepared themselves to exercise, unless clear and sound reasons of public policy demand such action. The cause of independent broadcasting in general would be seriously endangered and public interests correspondingly prejudiced, if the licenses of established stations should arbitrarily be withdrawn from them, and appropriated to the use of other stations. This statement does not imply any derogation of the controlling rule that all broadcasting privileges are held subject to the reasonable regulatory power of the United States, and that the public convenience, interest, and necessity are the paramount considerations.

Chicago Federation of Labor v. Federal Radio Commission, 41 F.2d 422, 423 (D.C. Cir. 1930). More recently than that, the court has deduced that an expectancy of renewal for meritorious past service is derived directly from the dynamics of the Communications Act of 1934. *Greater Boston Television Corp. v.* FCC, 444 F.2d 841, 854 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971). *See also Central Florida Enterprises*. Against the weight of this authority, Straw has not contended frontally that the renewal expectancy concept is any less apposite in the case at bar. *I.D.*, para. 270[10]; Straw simply challenges the factors considered by the ALJ, and the manner in which those factors were applied in this case.

A. *Factors To Be Considered*

(1) *Straw's " Alternative " Programming Argument*

8. Pervading Straw's attack on the SPS stewardship, both in the past broadcast record of KNHC-FM and SPS's proposed continuation of that operation, is Straw's claim that in utilizing a popular music entertainment format which "mirrored" that of a commercial broadcast station, SPS failed in its "core" obligation to provide "alternative" programming to that offered by other stations in the community.[11] Straw charges that KNHC-FM "operates as completely as possible like a commercial station and simply adds to the glut of popular music available on the commercial FM band."[12] It complains: "The [KNHC-FM] format is popular 'dance music' rotated according to computer- generated 'plot sheets' or play lists. No attempt is made to provide any 'alternative' to popular music already available in the market."[13] In so doing, Straw maintains, SPS has defaulted on the obligation imposed directly under Section 396(a) of the Communications Act of 1934, 47 U.S.C §396(a),[14] which, in pertinent part and with Straw's emphasis added, reads as follows:

> (a) The Congress hereby finds and declares that--
>
> (1) it is in the public interest to encourage the growth and development of public radio and television broadcasting, including the use of such media for instructional, educational and cultural purposes . . .
>
> (5) it furthers the general welfare to encourage public telecommunications services which will be responsive to the interests of people both in particular localities and throughout the United States, which will constitute an expression of diversity and excellence, *and which will constitute a source of alternative telecommunications services for all the citizens of the Nation.*

Straw further quotes the 1981 House Report amending Section 396(a) as evidence of a Congressional intent "to impose a duty on noncommercial broadcasters to provide diverse 'alternative' programming, in addition to their duty . . . to serve 'instructional, educational, and cultural purposes.'"[15] In contrast to the popular music entertain-

ment format programmed by KNHC-FM. Straw raises as an exemplar its own proposed entertainment format, summarized by the ALJ as follows:

> Jack Straw's proposed program schedule consists of 131.5 hours per week. Elizabeth Sinclair, Jack Straw's principal programming witness, was asked about each of the programs in the schedule. She acknowledged that 95 hours of programming (72 percent of the total) involves music, with large blocks of time devoted to jazz (20.5 hours) and folk music (18 hours), and 56.5 hours consisting of "other" music, including music of other countries (*e.g.*, India, Turkey and other countries), gospel music, blues, classical music, vintage rock, reggae, East Texas country music, and fusion jazz. An additional 15 hours of programming each week consists of repeats of some of the music programs, for a total of 84 percent music programming. The remaining 21 hours in the proposed schedule consist of a mix of readings, poetry, conversations, children's programming, news broadcasts, public affairs, and general informational programming.

I.D. at para. 212 (record citations omitted). Quoting from the Commission's 1984 order deregulating noncommercial radio, Straw asserts that its proposed entertainment format, but not KNHC-FM's, properly conforms to the Commission's view that the entertainment programming of noncommercial stations "will provide their communities with significant alternative programming designed to satisfy the interests of the public not served by commercial broadcast stations" and that such programming will be "very different, in programming terms, from their commercial counterparts," *Program Policies and Reporting Requirements Related to Public Broadcasting Licensees*, 98 FCC 2d 746, 751 (1984) (*Deregulation Order*).

9. The SPS riposte to Straw's critique of its entertainment format is oblique, and - as with much else of its brief - couched deeply in its use of the station as a vocational classroom. The SPS thesis is that "a station that mirrored the operation of a commercial station would better prepare students for employment or further education in the field."[16] At hearing, SPS indicated that, from 1981-1983, KNHC-FM "featured a predominantly rhythm and blues sound," but it shifted to a "Top 40" format of "'dance music' - music characterized by a strong and steady 4/4 beat, which creates a distinctive and 'danceable' sound that has been identified with Station KNHC" - after a local commercial station shifted to a rhythm and blues format. *I.D.*, para. 24. SPS further explained that its choice of "teen" music was intended to lure students to the school's vocational program, and to establish an audience of teens to whom a portion of its nonentertainment programming was directed. *Id.*

10. As a rudimentary matter, we reject Straw's doctrinal postulate that the term "alternative" programming has the talismanic potency ascribed to it by Straw. First, we do not construe the language of Section 396(a) of the Communications Act to establish either operational or license renewal standards for noncommercial broadcast stations. The language highlighted by Straw is contained in a 1981 amendment to the original Public Broadcasting Act of 1967, and sets forth the Congressional basis for establishing and continuing to fund with public tax monies the Corporation for Public Broadcasting, *see* Section 396(b),[17] to which the declarative and rather precatory language is directed as a guideline for the Corporation's own funding activities. *Cf. Public Radio and TV Programming*, 87 FCC 2d 716, 736-737 (1981)(*Notice of Proposed Rule Making*). As Straw is no doubt aware, this Commission's reservation of broadcast frequencies for noncommercial broadcasters antedates the 1967 CPB Act by many years - 1952 for television stations[18] and 1945 for FM radio stations.[19] As will be demonstrated, the relevant statutory standard for renewing a noncommercial broadcast station is the "public interest, convenience, and necessity" language of Section 307(c) of the Communications Act, 47 U.S.C. §307(c), as that statutory standard has been interpreted and implemented by the Commission.

11. Which brings us to our second reason for rebuffing Straw's fixation on "alternative" entertainment programming. Over the years, the Commission has several times formulated the "public interest" requirements for noncommercial broadcast stations. In the main, these obligations have come to very much parallel those applied to commercial stations. Thus, in 1973, the Commission reviewed the history and purpose of noncommercial stations. Though recognizing that the "noncommercial broadcast service, by definition, differs markedly from the commercial service," *Educational Broadcast and Renewal Applications*, 42 FCC 2d 690, 694 (1973), the Commission also noted, even then, that:

> When noncommercial frequencies were first allocated, applications by educational institutions seeking to meet their own institutional needs predominated. The present profile of noncommercial educational stations, however, is quite different, as petitioners have pointed out. Although many stations still devote a portion of their broadcast day to instructional programming, the major part of that day, particularly evening hours and weekends, is occupied by programming which is aimed at a broad spectrum of community problems, needs and interests.

Id. (footnotes omitted). After studying the evolution of the noncommercial broadcast service, the Commission concluded that:

> [I]t is a mistake to regard the noncommercial service as something apart from, and outside of, the basic structure of the Communications Act and Commission policies. The Act and its legislative history and our own pronouncements make clear the obligations imposed on educational broadcasters and the authority of the Commission to examine whether educational broadcasters have sought to ascertain and to meet community needs and to contribute to the goal of an informed electorate through controversial issue programming.

* * *

> [T]he Commission agrees . . . that noncommercial educational broadcasters should be attuned to the problems, needs and interests of their service areas and should present programming in response thereto.

Id., at 694-695 (footnote omitted).[20]

12. In 1976, the Commission revisited the essential obligations imposed on noncommercial broadcasters and restated:

> that the role of noncommercial educational broadcasting has never been precisely defined . . . [We] declined to do so in this proceeding because we believed that "the flexi- bility and freedom of the service is, in large part, fundamental to its existence." *We recognized that it was not the legislative intent of Congress to limit these broadcasters solely to educational and cultural programming*, but that the Communications Act of 1934, as amended in 1967, expressed a Congressional finding "that expansion and development of noncommercial educational radio and television broadcasting and of diversity of its programming depend on freedom, imagination, and initiative on both the local and national levels." 47 U.S.C. 396(a)(2).

Ascertainment of Community Problems by Noncommercial Educational Broadcast Applicants, 58 FCC 2d 526, 529 (1976)(emphasis added). And, it observed that "[i]t is evident that the role of the noncommercial educational service has grown from purely 'instructional programming' to include a broader variety of 'public programming.'" *Id.*, at 536. For noncommercial FM radio stations, the Commission there modified, but squarely reasserted, the core requirement that such stations respond to "the principal needs and interests" ascertained in the community. *Id.*, at 537. Still again in 1981, the Commission restudied at length the history of noncommercial broadcasting and held:

> We believe that at least four matters are of primary importance when considering the programming responsibility of public broadcasters under the general "public interest" standard of the Act. We will outline each of these below. They are: (1) the intent of Congress in fostering the public broadcast service as evidenced in relevant legislation; (2) the Commission's traditional desire to avoid all unnecessary intrusion into the programming decisions of licensees, including those of public broadcasters; (3) the Commission's historical policy of allowing other forces to determine the character and content of the public broadcasting service[;] and (4) the Commission's recent policy of recognizing and relying upon social and market forces in broadcasting which lead to positive public interest results without specific Commission intervention.

Public Radio and TV Programming, supra, 87 FCC 2d at 730. It further distanced itself from a supervisory role over program content by stating:

> *Character and Content of Public Broadcasting.* The basic role of the FCC in the history and development of public broadcasting has been to insure that spectrum space is available for its use *and to broadly classify its program service*. It has meant that the Commission has had the appropriately limited role of facilitating the development of the public broadcasting system rather than determining the content of its programming. From the perspective of the Commission, public broadcasting is characterized largely by a negative distinction, *i.e.*, public stations are not operated by profit seeking organizations nor supported by on-the-air advertising. The positive dimensions of public broadcasting are determined by social, political, and economic forces outside the Commission.

* * *

> Rather than imposing one unified and comprehensive standard for public broadcasting, the Commission has allowed those who operate, support, and consume public broadcasting to directly determine the nature of its service, *especially its programming*.

Id., at 732 (emphasis added).

13. Having thrice in eight years detailed the maturation of noncommercial FM radio stations, and laid out the basic standards by which such stations would be judged at renewal time, it is instructive to peruse a sample of license renewal cases involving noncommercial broadcast cases to pinpoint the Commission's performance focus. For example, in renewing the license of Station WHYY-TV, Wilmington, Delaware, the Commission held that, like a commercial broadcaster, a noncommercial "licensee's prime and most important focus must be on the problems, needs, and interests of its community of license." *WHYY, Inc.*, 93 FCC 2d 1086, 1096 (1983). In renewing an earlier license for that same Station WHYY-TV, the Commission stressed that, "while a licensee is required to serve ascertained needs in its overall programming, the decision as to how much programming to present concerning which needs is largely within the licensee's reasonable good faith discretion." *WHYY, Inc.*, 53 FCC 2d 421, 425 (1975). *Accord, Community Television of Southern California*, 72 FCC 2d 349, 354 (licensee is afforded broad discretion to meet the diverse needs of groups within its service area), *recon. denied*, 46 RR 2d 1103 (1979); *Mississippi Authority for Educational Television*, 71 FCC 2d 1296, 1308 (1979), *recon. denied*, FCC 80-305, released May 29, 1980. In short, the Commission's historic function in gauging whether a noncommercial licensee has earned a renewal "is the very limited one of assaying . . . whether the licensee's programming, on an overall basis, has been in the public interest and . . . whether he has made programming judgments reasonably related to the public interest." *Pacifica Foundation*, 36 FCC 147, 149 (1964). *See also Georgia State Board of Education*, 70 FCC 2d 948, 949-963 (emphasizing duty of noncommercial licensee to ascertain needs and interests of its service area and to exercise its broad discretion to determine in good faith which needs will be met and the substance of programs to meet those needs), *recon. denied*, 71 FCC 2d 227 (1979).

14. Straw's jeremiad against KNHC-FM for its failure, in Straw's view, to concentrate on "alternative" or "niche" entertainment programming inspires us, in Shakespeare's lyric, to "summon up remembrance of things past" and find ourselves beset with "old woes new wail."[21] For it seems that the war between Straw's perception of the bedrock duty of a noncommercial broadcaster to provide "alternative" programming, such as the ethnic-oriented and foreign language fare that appears in its own proposal, and a more generalized obligation - within the wide boundaries of licensee discretion - to respond to ascertained community needs, problems and interests was a skirmish rehearsed at the Commission more than a decade ago. *Compare Puerto Rican Media Action and Educational Council, Inc.*, 51 FCC 2d 1178 (1975) *with Dissenting Statement of Comm'r Benjamin L. Hooks, id.*, at 1195. In that case, the Commission majority rejected a complaint that a noncommercial broadcaster had defaulted on its alleged basic duty to provide specialized "niche" programming. Its opinion stated that:

> in assessing whether a licensee's programming has been responsive to the needs of its community, we have consistently held that programming which is responsive to the needs of a community in general, need not be shown to be responsive to the particular needs of each individual group within that community.

Id., at 1181 (footnote omitted). The majority thereafter reiterated that, in assessing a noncommercial licensee's overall performance, "the Commission has always given its licensees great discretion in programming choice, so long as it meets the problems and needs of its community." *Id.*, at 1183-1184. As should by now be abundantly clear, the Commission's focus, and its renewal performance standard, for contemporary noncommercial broadcast stations is on a station's issue-responsive programming, much as it is for commercial broadcasters.[22] While noncommercial broadcasters may present these issues in a manner that differs from their commercial counterparts (as did SPS, *see infra* para. 51), it is upon such a licensee's issue-responsiveness that the klieg lights fall at renewal time.

15. An independent reason for resisting Straw's entreaty to review a licensee's performance from the standpoint of "alternativeness" is the omni-present force field of the First Amendment. With specific respect to noncommercial broadcasters, the Commission has observed:

> *Programming Regulation.* The Commission's role in the programming decisions of all broadcasters has always been profoundly affected by its sensitivity to the First Amendment rights of the public and of broadcasters and the specific noncensorship provision of Section 326 of the Act. This reluctance to interfere with free speech as a matter of constitutional and statutory law also has been respected by this Commission as a matter of sound public policy.

Public Radio and TV Programming, supra, 87 FCC 2d at 731-732 (footnote omitted). *See also Puerto Rican Media Action and Educational Council, supra*, 51 FCC 2d at 1183-1184; *Deregulation Order, supra* para. 8, 98 FCC 2d at 750-752. This is profoundly true insofar as Straw's lament is directed toward KNHC-FM's entertainment format, an area from which the Commission prudently evacuated many years ago. *FCC v. WNCN Listeners Guild*, 450 U.S. 582 (1981). While Straw would have the Commission reenter this thicket and subjectively calibrate a noncommercial licensee's programming performance on the alternativeness, *vel non*, of a licensee's entertainment programming, its brief elsewhere recognizes that[23]:

> The showings made by the incumbent must be objectively assessed by reference to verifiable standards of evaluation if the Commission is to avoid proceeding by "administrative feel" or some other "intuitional forms of decision-making, completely opaque to judicial review . . . ."

No "verifiable standard" is isolated by Straw's apotheosization of the term "alternative," as witness the fact that although Straw proposes a format largely consisting of "jazz," "folk," and "ethnic" music selections, the aforementioned KCMU-FM, another noncommercial station licensed to Seattle (*see supra* note 2), is reported as providing "Alternative mus[ic], rock/ ethnic."[24] It could be, therefore, that Straw's proposed programming might itself be considered insufficiently *outre'*, were we to deploy Straw's "alternative" entertainment format standard. Furthermore, though Straw complains that KNHC-FM's dance music entertainment format mimics that of ordinary commercial stations, the Commission recently noted without disapprobation in a case relied upon in Straw's own brief that:

> We recognize the fact that noncommercial educational FM stations may present a wide variety of programming including such matters as light entertainment, gospel or popular music, and sports.

Way of the Cross of Utah, Inc., 101 FCC 2d 1368, 1371-1372 n.5 (1985)(quoting noncommercial eligibility licensing guidelines). In fact, following the Supreme Court's decision in *WNCN Listeners Guild, supra*, we are aware of no case in which the Commission or the courts have paid the slightest attention to the entertainment component of a licensee's programming.[25] The entertainment format of KNHC-FM is of no moment here. And, finally, although Straw elevates the term "alternative" mentioned in Section 396(a) of the Communications Act to an operational imperative, *but cf. Public Radio and TV Programming, supra*, 87 FCC 2d at 731 (Section 396 directives "not specifically directed to the role of this Commission in public broadcasting), it omits mention of a companion section of the Act, Section 398, which, in pertinent part, reads as follows:

> (a) Nothing contained in this part shall be deemed . . . (2) . . . to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over public telecommunications, or over the Corporation or any of its grantees or contractors, or over the charter or bylaws of the Corporation, or over the curriculum, program of instruction, or personnel of any educational institution, school system, or public telecommunications entity.

16. For all of the foregoing reasons, we find that to the extent that a noncommercial FM radio station is measured at renewal time by its programming performance, the Commission has signaled that it is upon efforts to respond to local community needs, problems and interests that we concentrate. *Expressum facit cessare tacitum*. We take up SPS's endeavors in this regard, *infra*, paras. 29-39.

(2) *SPS " Vocational Training " Argument*

17. Straw next submits that SPS certainly should have received no bonus towards a renewal expectancy for its use of the frequency as a vocational training classroom for high school students. Quoting the Commission's language in *Multiple Ownership of Noncommercial Educational Radio*, *supra* note 16, 54 FCC 2d at 948,[26] Straw asserts that the Commission was there ambivalent about the reservation of such frequencies "for in-school instructional purposes 'when other means may well be available to do this without using a TV or FM broadcast channel.'" Straw Exceptions at 30-31 (footnote omitted). It recites the more recent language of *Way of the Cross*, *supra*, where the Commission rejected the argument of an unsuccessful applicant for a noncommercial TV channel that the Commission should consider that applicant's intended use of the station for vocational training. The Commission there stated:

> The fact that [the noncommercial applicant] will offer on-the-job training does not distinguish it from any other broadcaster, commercial or noncommercial, and such training has never been considered as a factor in determining an applicant's eligibility to operate on a reserved channel.

101 FCC 2d at 1375 n.10.

18. The instant *I.D.* reflects that the ALJ considered a mountain of evidence regarding SPS's use of the station as a vocational training device and as a curricular component of the high school's course of instruction. *Id.*, paras. 22-50. Therein, the ALJ recounted testimony and other evidence of the following nature: that the students were taught the history of broadcasting, electronics theory, specific job functions common to commercial stations (*e.g.*, announcing, station management, engineering, FCC compliance), cultural awareness, "team effort," and individual responsibility. In computing a potential renewal expectancy for SPS, the ALJ eschewed the proposal of the Mass Media Bureau that he utilize the performance standards generally applicable to commercial stations, *i.e.*, issue-responsive programming keyed to ascertained community needs, problems and interests, reputation in the community, compliance with FCC rules and regulations. *Id.*, para. 271. Finding the Mass Media Bureau's focus "too narrow" and "incomplete since it has completely overlooked the educational aspects of the School System's stewardship," *id.*, it is obvious that the ALJ's conclusion that SPS "is entitled to the greatest credit in terms of a renewal expectancy," *id.*, at para. 277, was influenced materially by his positive view of the school's vocational program. The ALJ also credited these vocational training facets of the SPS record in favoring SPS under the standard noncommercial comparative issue (Issue 4), *see id.*, paras. 278-280, a matter we review *infra*, paras. 61-62, in our analysis of the exceptions to the *I.D.* 's comparative evaluation.

19. SPS champions the *I.D.* in this respect, and pleads that the Commission language cited by Straw "cannot be read to preclude credit being given to an educational institution for doing what it is supposed to do - *train students*. "[27] At oral argument before the Board, SPS counsel was quizzed as to whether SPS was aware of any Commission case or policy statement supporting the notion that curricular vocational training was a cognizable element in the agency's regard for noncommercial FM station renewal performance. Counsel offered that the Board's *New York University*, *supra*, did take notice of the fact that NYU had offered courses in radio for many years, that its proposed station would be a logical outgrowth of its past activities, and that station would function as a "valuable tool for putting into practice in an actual broadcasting operation the lessons of the classroom." 19 FCC 2d at 368. Counsel also propounded the commonly held view "that the training of teenagers in this nation at this time is a service to the community."[28]

20. After examining the skein of Commission policy statements directed to noncommercial FM licensees, and issued during the nearly two decades since the Board's dictum in *New York University*, we find ourselves in essential accord with the Mass Media Bureau that, for purposes of measuring a station's past performance, our basic renewal standards are virtually the same for noncommercial and conmmercial stations, and that no consideration, pro or con, be given to any vocational training element of a licensee's operation. In paragraphs 11-14, *supra*, we have traced the metamorphosis of noncommercial broadcasting, as seen through the eyes of the Commission, from a nascent medium in which the institutional needs of the licensee predominated, *see Educational Broadcast and Renewal Applications*, *supra*, 42 FCC 2d at 694, to a point where the Commission has lately perceived that the grand incident of contemporary noncommercial stations is that such stations "are not operated by profit seeking organizations nor supported by on-the-air advertising." *Public Radio and TV Programming*, *supra*, 87 FCC 2d at 732.

21. Starting in 1973, and incrementally thereafter, the Commission began to voice its concern that the dwindling inventory of noncommercial broadcast spectrum space be utilized to some reasonable degree for community-oriented service. *See, e.g., Educational Broadcast and Renewal Applications*, *supra* (42 FCC 2d 690); *Ascertainment of Community Problems by Noncommercial Educational Broadcast Applicants*, *supra* (58 FCC 2d 526 (1976)). By 1978, the Commission was compelled to declare that:

> The passage of time and resulting changes in spectrum needs requires us to examine all these matters anew. Although the noncommercial educational FM channels have long been reserved, it has only been recently that the demand for their use has increased greatly.

Noncommercial Educational FM Broadcast Stations, *supra* note 18, 69 FCC 2d at 243. It there for the first time adopted minimum operating schedules for noncommercial stations, and it specifically rejected the pleas of educational institutions (including high schools) that such minimum operating schedules were incompatible with the operation of those stations by students. The Commission contemplated these complaints:

> A number of such stations pointed to their reliance on student staff members, most of whom, they said, would not be available during vacations and holidays. Other costs involved in extending the hours of operation such as maintenance, security, engineering supervision, tape rental costs and utility cost were also mentioned. Some felt that even if stations were not forced off the air, they could be put in the position of having to ask students to withdraw from their other activities if they were required to participate on the level required by a minimum operating schedule. In many cases, stations said volunteers are an important part of their staff and that it would be unrealistic to expect that their time at the station could be increased to meet a minimum schedule.

Id., at 252. And, it further reflected:

> *The proposal for a minimum schedule was also attacked as a hardship for high school stations.* Since state law typically requires such students to be supervised at all times when participating in school activities, a minimum schedule, we were told, would mean a significant increase in cost to provide such supervision. *We were warned that in times of severe budget restrictions, the necessary funds might not be available.* This concern led one party to suggest exempting elementary and high school stations but not college stations from a minimum schedule requirement.

Id. (emphasis added). But, the Commission countered:

> The comments offer a great deal of insight into the preferences of individual stations and in particular to the desire of a number of them to avoid any requirements regarding the number of hours they need to operate. *However, these stations gave little attention to the public's right to expect that a station occupying a frequency would use it to a reasonable degree to provide a service to the public.* Spectrum space is scarce and is becoming more so. In fact, in many parts of the country, there is little or no spectrum space available to accommodate additional services.

Id., at 254 (emphasis added).

22. The unmistakable inference to be drawn from the language of the host of policy documents relating to noncommercial broadcast service, including those directly relating to FM radio stations operated by high schools, is that irrespective of the nature of the licensee, the Commission's performance expectations center on the licensee's service to the listening (and viewing) community, and not on service to the licensee itself. As verified by this very case, the demand for noncommercial FM frequencies exceeds their availability, and not every high school, university, and/or educational organization that desires a broadcast frequency can obtain one. That is why the Commission has indicated that other methods of vocational training are available, short of allocating very scarce broadcast spectrum for that internal purpose.[29] SPS is implicitly aware of this alternative opportunity to train vocational students, since it has a classroom "devoted continuously to television production activities," I.D. at para. 20, and it teaches courses in both radio and television, id., para. 22, but it has no television station license.

23. Dissuading us further from judgmental pronouncement on the vocational training aspect of the SPS record, apart from the glaring fact that the Commission has never explictly identified that activity as either a regulatory obligation or a renewal asset, is that this agency has never promulgated standards by which such an activity might be measured. For instance, SPS awards itself an "A+" for the quality of its vocational training program, whereas Straw grades it an "F." *Compare* SPS Reply at 22 *with* Straw Exceptions at 36-37. SPS would have it that adolescent vocational training is self-evidently in the public interest, a fact we do not deny, yet the Supreme Court has reminded that "the use of the words 'public interest' in a regulatory statute is not a broad license to promote the general public welfare. Rather, the words take meaning from the purposes of the regulatory legislation." NAACP v. FPC, 425 U.S. 662, 669 (1976); cf. *Community Television of Southern Calif. v. Gottfried*, 459 U.S. 498, 509 n.14 (1983). In the numerous policy statements we have referenced in the previous paragraphs, the Commission has limned, and refined, the "public interest" standard of the Communications Act with respect to noncommercial radio stations, and the case law narrowly frames the Commission's purview in the ambit of noncommercial license renewal. With neither expertise nor experience in assessing the quality of vocational training programs, this Board certainly has no pedagogic benchmark for assaying whether the SPS curriculum was superior, meritorious, or merely mundane. What the Board does have, however, is a record of station broadcast performance that can be measured objectively against the community-oriented program standards annunciated by the Commission in its many visitations.

24. None of this - *we are at pains to emphasize* - is to be read to imply that the use of a noncommercial broadcast station as a vocational classroom is discouraged by the Commission, which is well and contentedly aware of such utilization by many educational institutions holding FM broadcast licenses. *See Noncommercial Educational FM Broadcast Stations, supra*, 69 FCC 2d at 252. However, SPS-witness after SPS-witness testified that the crowning monument of the KNHC-FM vocational training experience is that it affords a "real" radio station environment to students, as opposed to an "electronic sandbox." *See, e.g., I.D.*, paras. 52-62, 310. It is, therefore, superfluous to monish SPS further that KNHC-FM is a *real* FM radio station, burdened by enforceable public interest duties to the Seattle listening community; and it would occur, in passing, that the vocational training of SPS students would in any event be *enhanced* by holding KNHC-FM to the same FCC performance and renewal requirements as all other broadcast stations, and *diminished* to the degree that occupational training, in and of itself, were considered a renewal performance "plus" available nowhere else in the "real" world of domestic broadcasting.[30]

(3) SPS Hours of Operation

25. Straw next contends that the renewal expectancy awarded by the ALJ should have been pared for "SPS's failure to operate KNHC on a full-time [i.e., 24 hours per day] basis."[31] Straw would sculpt any such credit even closer in view of the fact that "[b]etween 1981 and 1983, SPS contracted away 28 hours a week of prime broadcast

time to Seattle Central Community College," and that during that period Nathan Hale High School's "use of the frequency was essentially limited to school hours and school days."[32] SPS rejoins that, but for the aforementioned seven month period when KNHC-FM averaged only 67 hours per week *(see supra* para. 3), "KNHC operated at or above 84 hours per week both before and after the temporary reduction in hours."[33] The Mass Media Bureau supports SPS in this feud, opining that "[t]o the extent that the station broadcast less than the required number of hours for a limited time during the license period, the I.D. properly concluded that the School System's overall performance was not diminished."[34] The Mass Media Bureau additionally maintains that the temporary reduction in hours was excusable, as it resulted from a reduction in state funding, a happenstance "beyond the control of the licensee."[35]

26. Without holding that a licensee's hours of operation, if truly minimal, can never be taken into consideration in computing a licensee's renewal expectancy,[36] we find that the operating schedule of KNHC-FM - averaging as it did more that 12 hours per day for the great percentage of the license term - was more than adequate under Commission standards to avert any diminution of renewal expectancy credit. First of all, the Mass Media Bureau misstates (as did the Board at oral argument, *see* Tr. of Oral Arg. at 2793-2794) the Commission's minimum operating strictures for noncommercial stations when it suggests that SPS "broadcast less than the required number of hours" for the said seven-month period. Section 73.561(a) of the Rules, 47 CFR §73.561(a), specifies:

> (a) All noncommercial educational FM stations will be licensed for unlimited time operation except those stations operating under a time sharing arrangement. All noncommercial educational FM stations are required to operate at least 36 hours per week, consisting of at least 5 hours of operation per day on at least 6 days of the week; however, stations licensed to educational institutions are not required to operate on Saturday or Sunday or to observe the minimum operating requirements during those days designated on the official school calendar as vacation or recess periods.

At no time did SPS fall below that prescribed minimum.

27. Second, when SPS experienced budget difficulties that threatened its station's 84 hour per week operating schedule, SPS initiated discussions looking towards a potential time-sharing arrangement with another educational institution or organization. *I.D.*, para. 143. Although SPS held discussions in 1981 with, among others Straw itself, *id.*, it ultimately entered an arrangement with Seattle Central Community College (SCCC), whereby SCCC operated for 28 hours per week from SCCC's own remote studio, under the supervision of Gregg Neilson, an SPS employee at that time. *Id.*, para. 144. The SPS/SCCC arrangement was perfectly permissible under Section 73.503(c) of the Commission's Rules, 47 CFR §73.503(c) which, in pertinent part, reads as follows:

> A noncommercial educational FM broadcast station may broadcast programs produced by, or at the expense of, or furnished by persons other than the licensee, if no other consideration than the furnishing of the program and the costs incidental to its production and broadcast are received by the licensee.

Straw does not here insist that the SPS arrangement with SCCC amounted to an abdication of licensee control, as in *Trustees of the University of Pennsylvania, supra* note 33. Nor does it here contend that the SPS/SCCC arrangement transgressed any other Commission rule or policy. Actually, the gravamen of Straw's assault on the SCCC program sharing arrangement seems *not* to be that the arrangement was *not* in the public interest, but that the arrangement was with SCCC rather than with Straw.[37] Nothing in Straw's exceptions explains why the SPS arrangment with SCCC - a quasi-time-share of SPS's own choosing - should, standing alone, detract from SPS's renewal expectancy.[38]

28. Third, the Commission has deliberately chosen a very precise regulatory mechanism, in Section 73.561(b), for addressing noncommercial stations that operate fewer than 84 hours per week. In adopting that rule, the Commission made explicit that stations operating below that level would not suffer at renewal time, *see Noncommercial Educational FM Broadcast Stations, supra*, 70 FCC 2d at 982, but it did augur a licensee's susceptibility to FCC imposed time-sharing under such circumstances. *Id.* Hence, the time-sharing issue designated in this very case. While the Commission has considered substantial differences in hours of operations as a *comparative* factor in comparative renewal cases, *Simon Geller, supra* note 25, 90 FCC 2d at 275-276,[39] and we do touch upon the proposed hours of operation of the two applicants before us under the comparative issue, *see infra* para. 69, as well as under the time-share issue, *see infra* para. 78, we find nothing in the SPS record of hours of operation (12 hours per day for all but 7 months of license term) that would impact adversely on SPS's renewal expectancy. *Compare Simon Geller* (44 hrs., 27 min. weekly schedule considered on *comparative* basis only).

B. *SPS Broadcast Record*

(1) *Issue - Responsive Programming*

29. In paragraphs 70-79 of the *I.D.*, the ALJ described a variety of public affairs programs produced locally and broadcast by KNHC-FM at various periods during the relevant license term.[40] Such programs were: *Action Line* (October 1983 - end of license term); *Beyond Our Shores* (February 1981 - January 1982); *Chinese Radio Program* (February 1981 - October 1981); *Mid - East International (passim)* ; *Spanish American Hour* (April 1981 - Summer 1982); *KNHC Public Affairs* (February 1981 - November 1982); *Community Calendar* (1981, 1983); *Briefs About Business* (March 1981 - July 1981); *Communique from Seattle Central Community College* (February 1981 - July 1981); *What's Happening In The Schools* (June 1982 - October 1983). In the referenced *I.D.* paragraphs, the ALJ described the content of these programs and found that many addressed, *inter alia*, the special needs and problems of foreign-speaking and ethnic populations within the Seattle community; local problems such as crime and

drugs, educational opportunities, environmental concerns, public health issues, local cultural events (movies, theater, museums), business news (career opportunities, international money matters, federal budget cuts, employee insurance plans). The program *What's Happening In The Schools* contained segments on the school's desegregation plan, vocational competency, and test scores. Straw's exceptions do not challenge the *I.D.*'s findings in the referenced paragraphs, and we have no independent basis for so doing. These findings are incorporated by reference in our decision.

30. In addition to the licensee-produced public affairs programs, KNHC-FM broadcast a plethora of public affairs offerings devised by other institutions, some of them local, and considered by SPS to be germane to the needs, problems and interests of Seattle. It is well-established that broadcasters, whether commercial or noncommercial in nature, are expected to serve local community needs, but may choose from non-local as well as local program sources to meet those needs. *Renewal of Broadcast Licenses*, 44 FCC 2d 405, 422 (1973)(It is not [the Commission's] intention to favor a particular program source or format, so long as the licensee's programming does, in fact, help to meet community problems and needs). The Commission has repeatedly recognized that national and institutional programming may acceptably meet local needs. *See WHYY, Inc., supra*, 93 FCC 2d at 1094-1098; *Community Television of Southern California, supra*, 72 FCC 2d at 353-354; *Georgia State Board of Education, supra*, 70 FCC 2d at 956-957; *Regents of the University of New Mexico & Board of Education - Albuquerque*, 47 FCC 2d 406, 412 (1974). Such KNHC-FM programs, described more fully in the *I.D.*, paras. 80-106, were: *Black Beat* (Spring 1983); *Black Report* (March 1982 to August 1982); *Israel Magazine / Israel Press Review* (February 1981 to August 1982); *Longhorn Radio Network* (February 1981 to June 1981); *Man and Molecules* (February 1981 to January 1983); *Science in the News* (February 1981 to June 1981); *Sounds of Listen* (February 1981 to August 1981); *U. S. Public Policy Forum* (April 1981 to August 1981); *Women Break Through* (March 1981 to May 1981); *American Physical Fitness* (April 1981 to May 1981); *Aware* (September 1983 to November 1983); *Blacks Before America* (Spring and Summer 1982, Fall 1983); *Business of Being a Baby* (February 1981 to September 1981); *Cornell University* (throughout license term); *Energy Watch* (February 1981 to June 1982; November 1982 to March 1983); *Everybody Can Be Somebody* (March 1981 to July 1981); *Farm and Foods Program* (February 1981 to August 1981); *For Your Information (August and November 1983); Forest Productivity (March 1983 to May 1983); Health File (February 1981 to March 1982); Hemispheres (1981-1983 school years); Labor News and Views* (1981 and 1983); NASA (throughout license term); *Popular Science* (June 1983 to October 1983 and in January 1984); *Spot News* (February 1981 to March 1982); *Washington Report with Senator Slade Gorton* (July 1983 to February 1984); *Working in the Sighted World* (February 1981 to May 1981). Straw has not challenged the ALJ's findings here either, and we incorporate his descriptions into this decision.

31. In paragraphs 111-124 of the I.D., the ALJ digested a number of other nonentertainment programs broadcast at various points during the license term, and regarded by SPS as being attentive to the needs, problems and interests of the community. These were: *American Gardner* (March 1982 to June 1982); *Astrofecha/Star Date* (September 1981 to December 1981); *Audio News Features (passim); Gospel Music Program* (June 1982 to February 1984); *Horizontes* (September 1981 to March 1982); *Let's Talk* (February 1981 to June 1981); *Local Military Recruit of the Day* (1981-1982 holiday session); *One Minute Thoughts for Each Day* (February 1981 to August 1981); *Mother Earth News* (February 1981 to November 1983); *Pets and Vets* (February 1981 to June 1981); *Radio Nederland* (February 1981 to April 1981); *Tips for Home Gardeners* (April 1981 to June 1981); *What in the World Happened* (February 1981); *The Word* (March 1982 to February 1984).

32. Throughout the license term, KNHC-FM broadcast news programs (of 4-5 minute duration) "several times a day to hourly." *I.D.*, para. 107. These newscasts were produced by the school's students, and were ordinarily aired prior to 2:00 PM when the school day ended; few, if any, newscasts occurred on weekends. *Id.* But *see Pillar of Fire, supra* para. 6, 99 FCC 2d at 1263-1264 (local newsgathering is but one facet" of measuring responsive programming).

33. KNHC-FM also broadcast Public Service Announcements for a considerable number of "local, regional and national public service organizations, governmental departments and agencies, and colleges and universities." *I.D.*, paras. 108-109.[41] The ALJ found that the station featured the messages of 70 such organizations from February 1981 to August 1981; 100 such organizations from September 1981 to August 1982; 120 such organizations from September 1982 to August 1983; and 65 such organizations from September 1983 to February 1984. Each year, the station offered its facilities to numerous organizations whose messages had not been aired previously. Again, Straw disputes none of these basic findings, which are likewise incorporated.

34. Straw fires a dual salvo against the ALJ's favorable consideration of the above programming. First, it postulates "that a noncommercial licensee's obligations are fundamentally different from those of a commercial licensee" in that "the responsive programming to which such [a renewal] expectancy would attach must be based on the process of programming addressing needs and interests not being provided by other broadcasters in the community, particularly commercial licensees."[42] It argues that a noncommercial licensee's ascertainment of local needs and interests "is not limited to non-entertainment programming, but *may* include the need for a vast array of general educational, informational and cultural programming . . . ."[43] Straw's second complaint is that the ALJ considered a great, undifferentiated mass of nonentertainment programming, but that "SPS provided no quantitative or numerical analysis of its non-entertainment programming, [and] made no effort to compare its non-entertainment programming with . . . commercial stations."[44]

35. Straw's first shot, that issue-responsive programming is invalid towards a renewal expectancy unless geared to needs and interests not addressed by other broadcasters, is, of course, a variation on its theme of "alternativeness" discussed earlier. It is true, as Straw maintains,[45] that the ascertaining of local needs and interests is a prerequisite to regarding a licensee's programs as issue-responsive. *Simon Geller*, 90 FCC 2d at 264-265. During the license period here under consideration (February 1981 - February 1984), the ascertainment procedures applicable to noncommercial broadcasters were contained in the Com-

mission's 1976 *Ascertainment of Community Problems by Noncommercial Educational Broadcast Applicants, supra,*[46] where it announced that:

> *[W]e shall permit noncommercial educational radio applicants and existing licensees to ascertain by any reasonable methods designed to provide them with an understanding of the problems, needs and interests of their service areas.* This process is to be documented by a narrative statement regarding the sources consulted, the survey methods followed and the principal needs and interests discovered. Additionally, educational radio renewal applicants are to complete an annual list of up to 10 problems found in the community during the preceding 12 months, together with examples of programs broadcast to meet these problems.

58 FCC 2d at 537 (emphasis added).

36. The ALJ records, at paragraph 31 of the I.D., that SPS followed an ascertainment process as outlined: (1) The Public Affairs Director of KNHC-FM was responsible for the station's ascertainment process; (2) The Public Affairs Director occasionally accompanied the station's General Manager to regularly scheduled meetings between Seattle broadcasters and community leaders for purposes of identifying the top ten issues of concern to the public, based upon a statistical analysis of interview notes with those leaders; (3) the Public Affairs Director compiled the annual list for issue-responsive programming; (4) students in the stations's Public Affairs Department were assigned a broad topic taken from the list, as enlightened by ascertainment interview notes, and given a suitable subtopic for student-produced programs; (5) the programs thus produced were monitored before broadcast by the Public Affairs Director and the Program Director. There was further augmentation of this process: "[t]he station also commissioned a telephone survey of the general public during the license renewal period" to confirm the identification of problems and interests by community leaders. *Id.*, at para. 68. Potential Public Service Announcements, of which there were approximately 100 per week, were screened by the station's Continuity Director. *Id.*, para. 32. The ALJ reviewed this process, along with the programs produced thereunder, and concluded that "KNHC's public affairs programming covered a wide range of issues of community concern identified through the station's ascertainment efforts." *Id.*, at para. 288. The ALJ also recognized the station's efforts with respect to news, *id.*, para. 289, and Public Service Announcements. *Id.*, para. 290. We too find that SPS has complied fully and faithfully with the Commission's 1976 *Ascertainment* requirements, and that it followed a systematic course designed to assure that the problems, needs and interests thus elicited would be covered in KNHC-FM programming.

37. Straw's insistence that SPS failed in its duties because the station responded to the same top ten problems as other Seattle stations is bizarre. Had SPS dutifully compiled its annual top ten problems list, as required by the 1976 *Ascertainment* policy, and then ignored those locally pressing issues in favor of "alternative" programming, it would have been in apparent violation of regnant FCC ascertainment and responsive programming standards. *Catch 22*, as it were. Moreover, once having ascertained those local problems, SPS could not have perfectly anticipated which of these other local stations intended to cover in the upcoming year, and any KNHC-FM future programming plans to avoid these same issues "might [as] well have been the product of omphalic inspiration, or ornithomancy, or haruspication, or aleatory devices . . . ." *Old Colony Bondholders v. New York, N.H. & H.R. Co.*, 161 F.2d 413, 450 (2d Cir. 1947)(Frank, J. dissenting in part)(footnote omitted). We find that the Commission's operative ascertainment requirements were clear, and followed to the letter by SPS. That Straw has contrived an "alternative" standard in its own self-image, *see I.D.*, paras. 272-276, summons no mandate for this Board to ignore the ascertainment and responsive programming standards imposed by the Commission.

38. Straw's second round at the SPS issue-responsive programming record is that SPS furnished "no quantitative or numerical analysis" of its license term nonentertainment programming.[47] It compounds this criticism by alleging that "SPS has not provided any sort of program schedule reflecting a representative or typical week"; that SPS "has provided a 'descriptive' rather than [a] 'quantitative' analysis of its nonentertainment programming"; that "[n]o summary of news, other nonentertainment programming, or PSA's [Public Service Announcements] is provided"; that SPS is "only willing to characterize" those programs" listed in paragraphs 29-31, *supra*, as "typical and illustrative issue-responsive programming"; that such "programs ranged from 30 seconds to 15 1/2 minutes at various times on weekdays"; and, that by analyzing the SPS program exhibits, Straw demonstrated that "at best . . . KNHC broadcast no more than 2.5% nonentertainment programming."[48]

39. Filching another Shakespearean exclamation, "Zounds! I was never so bethump'd with words, Since I first call'd my brother's father dad."[49] Rather than respond discretely to each of the foregoing lamentations - for we are uncertain of the legal relevance or critical import of much of Straw's broadside - we will examine the content and character of the SPS program exhibits. The ALJ reports that:

> For purposes of this proceeding, the School System prepared and submitted a study of its nonentertainment programming -- including public affairs, news and sports programs, public service announcements, and other non- entertainment programming -- based on an analysis of the programming presented in the first and third full broadcast weeks (Sunday through Saturday) of each month from February 1981 through January 1984. The study was based on "sample logs," admitted as exhibits in this proceeding, which were prepared by extracting from the station's program logs the information with respect to all of the station's nonentertainment programming (including date, day of the week, title of the program, source, start time, and duration) during the sample weeks. Based on the programming identified in the sample logs, the School System prepared a narrative description of its nonentertainment programming, including issue-responsive public affairs programming, presented in each school year since the start of the license renewal period. The School System also submitted its annual and quarterly Issues/Programs lists for the same period.

I.D., at para 66 (citations omitted). As previously discussed, many of these programs were the product of SPS's systematic ascertainment effort. The ALJ examined these extensive programming exhibits, identifed the correlation between ascertained needs and SPS's Issues/Programs lists, *id.*, and examined the logging practices of KNHC-FM to assure the accuracy of SPS's labeling procedure. We have, again, reviewed those exhibits and affirm the ALJ's finding that, over the license term, KNHC-FM broadcast a very substantial amount of programming specifically attuned to the pulse of the local community. Straw does not contend that KNHC-FM flatly ignored any obvious local need (except insofar as Straw's fixation on "alternative" programming). *See, e.g., Stone v. FCC*, 466 F.2d 316, 328 (D.C. Cir. 1972); *Alabama Educational Television Commission*, *supra* note 33, 50 FCC 2d at 470-473. As to Straw's assault on SPS's failure to provide a quantitative analysis of its nonentertainment programming, we reiterate the point made in *Pillar of Fire*, *supra*, that both the Commission and the courts have evinced a "disinclination . . . to gauge, in any controlling degree, a station's responsiveness by a quantitative standard." 99 FCC 2d at 1261. And, that any such "statistical breakdown is merely one *prima facie* indicator of station performance; a quick starting point, but no more than that." *Id.* (quoting *Intercontinental Radio*, *supra*, 98 FCC 2d at 630). We next observed in *Pillar of Fire* that, "[t]o the extent that a quantitative index has been employed by the Commission," it has focused on two criteria: (1) a comparison with (then extant) "renewal guidelines", and (2) a licensee's "promise versus performance." 99 FCC 2d at 1262. Straw has not hinted at an SPS deficiency under either criteria. As to the more important qualitative indicia, Straw's condemnation rests, as all here concerned have made quite plain, on its remonstrance that SPS responded only to the same needs and problems that other local broadcasters had ascertained, and not to other "cultural and informational interests . . . given minimal attention by commercial broadcasters."[50] We have addressed this latter charge above, and stand on that disposition.

(2) *Reputation in the Community*

40. In evaluating the broadcast record of an incumbent licensee, one factor regularly considered is the station's reputation in the community which it serves. *E.g., Pillar of Fire*, *supra*, where we repeated:

> Although the Commission must assess a renewal applicant's record, our *Intercontinental Radio* decision found that the agency and the court have placed emphasis on the response of the licensee's consumers, its audience. *See id.*, [98 FCC 2d at 633]. *Inter alia*, we there cited (then) Judge Burger's invocation of " *our national tradition that public response is the most reliable test of ideas and performance in broadcasting as in most areas of life.* " *Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994, 1003 (D.C. Cir. 1966) (emphasis added); *see also Central Florida Enterprises*, *supra*, 683 F.2d at 508; *Victor Broadcasting*, *supra*, 722 F.2d at 762.

Id., 99 FCC 2d at 1275 (footnote omitted). *Pillar* then considered the testimony of 7 public officials and 24 other members of the general public, as well as an evidentiary sample from some 1593 letters from the general public received by the licensee during the license term. *Id.*, at 1275-1276. *See also Video 44*, 3 FCC Rcd at 3591 (83 viewer letters, including 21 complaints, considered); *Intercontinental Radio, Inc.*, 98 FCC 2d at 622-625, 633, 638, & 621 n.37 (consideration given to supportive testimony of 50 witnesses, 14 unsolicited commendatory letters, several listener complaints, and adverse community witness testimony); *Kaye - Smith Enterprises*, 98 FCC 2d at 684 (testimonials from various community leaders).

41. Straw asserts that SPS "provided virtually no evidence from community leaders that the station had contributed to the needs and interests of Seattle."[51] Although we have never held that a licensee's reputation in the community can only be vouchsafed by the testament of community leaders, particularly since ordinary listeners have standing to make their views known to the FCC, *Office of Communication of the United Church of Christ*, *supra*, Straw is correct that most, if not all, of the witness testimony described in the *I.D.* in support of KNHC-FM's record came from (1) SPS personnel involved in the school's vocational training activities (*see id.*, paras. 54-60), (2) Nathan Hale High School graduates who had later obtained jobs in broadcasting (*id.*, paras. 64-65), and (3) producers whose programs had been aired by KNHC-FM or parties for whom the station had broadcast Public Service Announcements (*id.*, paras. 129-133). For reasons more fully explained *supra*, paras. 20-24, we do not find relevant to the Commission's renewal oversight the school's vocational training activities, *simpliciter*. The questions of whether SPS ran a meritorious vocational training program, or even whether such a specialized activity is a productive use of scarce local educational resources (*see I.D.*, paras. 138-154), are beyond the ken of this civil licensing agency, and more appropriate for assessment by superintending educational authorities. Based upon our reading of the Commission's public policy statements on noncommercial broadcasting, a noncommercial station's license renewal would not be assured were it unanimously agreed that a licensee ran a superlative vocational training program, but failed abjectly in its regulatory duty to service the needs of the Seattle *listening* community, just as we would not downgrade a station at renewal time for a reputedly "poor" vocational training program, but where its program service to the community was otherwise meritorious. It is not gainsaid that vocational training and job placement by SPS is a salutary social byproduct of its operation of KNHC-FM, but this Commission's official federal charter encompasses neither educational curricula nor full employment. Consequently, we give scant weight to the witnesses in categories (1) and (2), above, in measuring this station's reputation in the Seattle listening community. The testimony of KNHC-FM's program producers (category (3) above) is patently self-serving, and likewise entitled to little weight, under the specific heading of community reputation. *But see infra* para. 51. That appears to leave the comments of Eddie Rye, *I.D.* para. 131, and Garcia Massingale, *id.*, para. 133, both of whom testified that KNHC-TV provided useful information to the community, as well as a forum for the presentation of their Public Service Announcements.

42. Compared to many other renewal applications we have scrutinized, the SPS showing of its reputation in the listening community was not very strong, in large part because SPS chose to rely heavily on testimony relating to

its vocational training. On the other hand, Straw concedes that the record here contains no complaints from the listening public (or local community leaders, for that matter),[52] a sounding read in prior comparative renewal cases. *E.g., Central Florida Enterprises*, 683 F.2d at 508. In sum, however, we essentially agree with Straw that the record here does not prove, by substantial evidence, that KNHC-FM enjoys a reputation in the Seattle area for superior public interest programming to the local community. We do not speculate on just what that actual reputation is; we simply say "not proven."

(3) ***Compliance with FCC Rules and Policies***

43. In contemplating whether an incumbent licensee is entitled to a renewal expectancy, the Commission routinely checks to determine whether there has been full compliance with Commission rules and regulations. *See, e.g., Central Florida Enterprises*, 683 F.2d at 509 (violation of main studio rule factored in); *see also Intercontinental Radio, Inc., supra*, 98 FCC 2d at 646, 647 (record "unblemished" by violations); *Tele - Broadcasters of California, Inc., supra*, 58 RR 2d at 233 (compliance record "pristine").[53] The instant record reveals no violations on the part of SPS; and apart from Straw's pandemic charge that KNHC-FM has failed utterly in its bedrock statutory duty to be "alternative", we are not made aware of any slight delict.

C. ***Summary and Conclusions***

44. The ALJ, as we have said, awarded SPS a strong renewal expectancy for its "outstanding performance during the license term." The Mass Media Bureau would concur based upon KNHC-FM's "substantial programming performance," *I.D.*, para. 271, but the ALJ's view was "that the proper test for measuring the School System's *past performance during the license* period . . . is the *same* as specified in the designation Order for evaluating the two applicants, namely, the *standard noncommercial comparative* issue." *Id.*, at 277 (empahsis added). On that predicate, the ALJ factored into his renewal expectancy award his personal view of the merit of SPS's vocational training program. *See id.*, paras. 45-50, 52-65. We, conversely, agree with the Mass Media Bureau and believe that SPS's renewal expectancy, if any, is to stem primarily from its program response to the Seattle community's ascertained needs, problems and interests, and we shall not attempt to evaluate, credit, or discredit, the SPS vocational training program. *Cf. Way of the Cross, supra*, 101 FCC 2d at 1375 n.10. Further, to the extent that the ALJ considered any post-license term activities in reaching his conclusion as to the SPS renewal expectancy, *see I.D.*, paras. 167-206, we shall disregard such evidence in our own review. *See supra* note 33 (*citing, e.g., United Broadcasting Company, Inc.*, 94 FCC 2d at 948-949).

45. Our own deliberations over whether SPS has earned a renewal expectancy, and the strength of any such renewal expectancy to be ultimately weighed against the results of our comparative issue (*compare, e.g., Video 44, supra*, 3 FCC Rcd at 3591-3592 (moderate renewal expectancy weighed against weak comparative challenger) *with Intercontinental Radio, Inc.*, 98 FCC 2d at 644-647 (moderate renewal expectancy weighed against substantial comparative challengers) *with Tele-Broadcasters of California, Inc.*, 58 RR 2d at 233-234 (strong renewal expectancy weighed against weak comparative challenger)), concentrated upon the same record factors as consulted in the aforecited comparative renewal cases. In so doing, we were acutely aware of the court's caveat in *Central Florida Enterprises* that the standards by which we measure the strength of any renewal expectancy may not be "'opaque to judicial review,' 'wholly unintelligible,' or based purely on 'administrative "feel".'" 683 F.2d at 508 (footnotes omitted). We also acknowledge that the Commission itself has recently conceded, in *Formulation of Policies And Rules Relating to Broadcast Renewal Applicants, supra* note 53, that "a program-based renewal expectancy, such as the present method of defining 'meritorious service,' has practical problems of administration." 3 FCC Rcd at 5193 (-5194).

46. With these compunctions firmly in mind, we shall nevertheless compare SPS's license term performance against the several criteria that have evolved out of *Central Florida Enterprises*, and thereafter applied in every comparative renewal case this Board has engaged since that decision, to wit:

Criterion 1.	*The licensee's efforts to a ascertain the needs, problems and interests of its community;*
Criterion 2.	*The licensee's programmatic response to those ascertained needs;*
Criterion 3.	*The licensee's reputation in the community for serving the needs, problems and interests of the community;*
Criterion 4.	*The licensee's record of compliance with the Communications Act and FCC rules and policies;*[54] *and*
Criterion 5.	*The presence or absence of any special effort at community outreach or towards providing a forum for local self-expression.*

47. Under Criterion (1), we find as the ALJ did in *I.D.*, paras. 31, 67-68, that SPS conscientiously complied with the Commission's prevailing ascertainment requirements. Its efforts were thorough, diligent, and continuous during the license term.

48. Under Criterion (2), we find that SPS assigned students to prepare public affairs programs based upon the Issues/Programs lists compiled as a result of its ascertainment efforts, *I.D.*, paras. 31, 68-71, 75-76, 79, 126, and that "KNHC[-FM] aired its issue-responsive programming throughout the broadcast day, including periods of high listenership, rather than relegating them to so-called ghetto blocks of time." *Id.*, at para. 127. It carried during the license term a wide spectrum of other public affairs programs selected by its Network Director, *id.*, at para. 33, to be of particular interest to the station's audience. *See id.*, paras. 80-106. It regularly broadcast its own news programs, *id.*, para. 107, and it broadcast numerous other nonentertainment programs it believed to be of relevance to its local audience, *see id.*, paras. 111-124. What is missing, as Straw says, is a quantitative breakdown of its nonentertainment percentages or a quantitative comparison with other local stations. As the Commission has just lately observed, "some cases have compared the percentage of time that an incumbent has devoted to total nonentertainment programming and to various categories of such programming -- such as news, public affairs, and local programming -- with the average percentage of such programming done by similarly situated stations in the

same market." *Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, supra* note 53, 3 FCC Rcd at 5193 (footnote omitted). While nothing estops a licensee seeking a renewal expectancy from preparing such an elaborate showing, and though the Board has noted such statistical analyses in other comparative renewal cases,[55] we made clear in *Pillar of Fire* (and in prior cases) that raw numbers are not at the heart of the story.[56] Numbers alone cannot and do not correlate to the more critical *qualitative* inquiry: *Did licensee programming respond to ascertained community needs?* Whereas SPS has not supplied a separate quantitative analysis, it has supplied its ascertainment process, its method of assigning broadcast coverage of the ascertained needs and problems, its program logs for every alternate week throughout the entire license term, and it has accompanied this showing with a list of typical and illustrative programs contained therein that responded to ascertained needs and problems. From this extensive material, both the ALJ and we have gleaned that KNHC-FM has solidly met the demands of Criterion 2.

49. Under Criterion 3, we find that SPS relied essentially on self-interested testimony as to the efficacy of its vocational training program, a matter the Commission has not identified as a renewal "plus" (or "minus). Nor has it published objective standards by which such training might be adjudged by this agency. We decline to fabricate our own. Our reluctance to credit this activity is also influenced by the Commission's many noncommercial broadcast policy statements, which have over time gently nudged such broadcasters into community-oriented service, and by the *Central Florida Enterprises* court's understanding that "renewal expectancy will be factored for the benefit of the public, not for incumbent broadcasters," 683 F.2d at 507 (emphasis and footnote omitted), as well as its reminder that "[i]t is the right of the *viewers and listeners*, not the right of the broadcasters, which is paramount." *Id.* (footnote citation omitted; emphasis added). We are not so Philistine as not to recognize the important social value of public school education and SPS's insistence that its primary job is to *"train students."* As a public educational authority, that proposition is incontestable; but in its trustee role as a broadcast licensee, the primary job of SPS is to use scarce broadcast spectrum space to serve the local listening community in the fashion described by the Commission's pertinent policy statements. By the standards of our comparative case law precedent, the SPS reputation showing here was weak.

50. Under Criterion 4, we find full compliance with the Communications Act and Commission rules and policies. Nothing here would obliterate or offset this licensee's renewal expectancy. *Compare, e.g., George E. Cameron Jr. Communications*, 91 FCC 2d 870 (Rev. Bd. 1982), *recon. denied*, 93 FCC 2d 789 (1987)(misrepresentation and rule violations; license lost to competing applicant); *KQED, Inc., supra* (station license lost to challenger).

51. In prior comparative renewal cases, the Board has also looked to see whether a licensee "has reached out beyond the station into its community with offers of station help and support." *See, e.g., Intercontinental Radio*, 98 FCC 2d at 643. The Commission has also declaimed that "noncommercial broadcasters have. . . . [a] duty to serve, to a significant extent, as outlets for local expression." *Educational Broadcast and Renewal Applications, supra*, 42 FCC 2d at 694. Hence, Criterion 5. The record here shows that SPS has reached out into the community with regular offers of help and support. *See I.D.*, paras. 108-109, 131, 133. But, it was in SPS's use of its facility as a megaphone for local self-expression that SPS truly excelled. For example, in conjunction with the University of Washington, it produced a local program on international affairs (*id.*, para. 71); hosted by the students of Seattle's Cleveland High School, it broadcast Chinese language programming and focused on the large Chinese population of Seattle (*id.*, para. 72); and it aired locally-produced public affairs programs on Mid-East culture (some in Arabic language)(*id.*, para. 73), Hispanic culture (some in Spanish language) (*id.*, para. 74), local business (*id.*, para. 77), local education (*id.*, paras. 78-79), the Black community (*id.*, para. 131), and on other local community problems and interests (*see, e.g., id.*, para. 133). What is more, a prominent function of KNHC-FM was to permit local teenagers to consider local problems, and to then express their own views on serious adolescent concerns such as crime, alchohol and drug addiction, race relations, education and employment opportunities, *etc., etc.*, in a manner that might be meaningful and helpful to the teenage audience it sought specially to entice by the "attractive nuisance"[57] of its "dance music" entertainment format. *See I.D.*, paras. 31, 49, 68-69, 72, 75-76, 276, 287-289. In other words, KNHC-FM was not a network pipeline or satellite clone, set on automatic and retransmitting only remotely preassembled material; nor was it a noncommercial simulcast sister. KNHC-FM was by, of, and especially for young persons of the city of Seattle. In that, the station was a forum for local self expression *par excellence*.

52. In light of all of the foregoing, the Board concludes that, while precise grading levels are elusive (*see Central Florida Enterprises*, 683 F.2d at 508 & n.27), SPS has painstakingly earned a strong renewal expectancy for overall service that "was in fact '"substantial," *i.e.*, "sound, favorable and substantially above a level of mediocre service which might just minimally warrant renewal."'" *Id.*, at 508 (footnote omitted). *Compare, e.g., Simon Geller* (no news, public affairs, ascertainment or issue-responsive programming; "minimal" service warrants renewal, but no earned renewal expectancy).

53. As opposed to the SPS renewal expectancy, Straw asks the Board to consider the renewal application it had filed for its formerly-owned KRAB-FM, and to award it the functional equivalent of a renewal expectancy, on the theory that Straw would have (if it had not sold the station) carried through on its past programming.[58] The ALJ had rejected an evidentiary submission based on the past programming of KRAB-FM, but Straw argues that if we do not consider that submission and award to Straw the functional equivalent of a renewal expectancy, SPS will have been granted a "vested property right" that would illegally defeat its *Ashbacker* right to a full and equitable comparative hearing.[59]

54. Properly awarding an incumbent licensee a renewal expectancy for meritorious performance does not invest a property right or deny a license challenger a full and fair hearing. *Central Florida Enterprises*. Straw is not the incumbent licensee in this case, but a challenger. As the ALJ accurately observed, the Commission has stated, and the courts have concurred, that awarding a renewal expectancy where deserved has three purposes:

(1) to reward the incumbent's proven performance;

(2) to encourage investments to ensure quality of service; and (3) to foster stability in the broadcast industry.

I.D., at para. 269. Here, Straw had sold the station on which it now rests its novel claim to the functional equivalent of a renewal expectancy, and SPS aptly retorts that "[a]llowing a licensee to sell its rights and still claim a 'plus of major significance' against an incumbent which has continued to serve the community would hardly reward incumbents for their proven performance, encourage investments to continue to provide quality service, or foster stability in the industry."[60] Just so, and no greater rebuttal is necessary to Straw's extraordinary hubris in this regard.

55. Despite our general affirmation of the ALJ's award of a strong renewal expectancy to SPS, the contest is not ended. A renewal expectancy "takes the form of a comparative preference" to be weighted against the other comparative factors, *Central Florida Enterprises*, 683 F.2d at 506 (citation omitted), to which we next turn our attention. The time-sharing issue will follow our review of the exceptions under the standard noncommercial comparative issue.

III. COMPARATIVE ISSUE

56. Upon Straw's request for reconsideration of the original *Hearing Designation Order* issued in this case, the Commission added the standard noncommercial comparative issue that has come to be employed in contests between two or more new noncommercial applicants seeking the same reserved frequency. Distinct from the prosaic standard comparative issue that commands the choice between commercial applicants, an issue that compares applicants on the several criteria set forth in the venerable *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (1965) (such principal criteria being diversification of media control, integration of ownership with management, local residence and civic activities, comparative signal coverage),[61] the standard noncommercial comparative issue is comprised of a three-pronged inquiry: (a) which applicant will best integrate the operation of the proposed station into the overall educational and cultural objectives of the applicant (*New York University*, 10 RR 2d 215 (1967)); (b) the manner in which the proposed operation of the competing applicants will meet the needs of the community to be served (*Pacifica Foundation*, 21 FCC 2d 216 (Rev. Bd. 1970)); and (c) whether other factors in the record demonstrate that one applicant will provide a superior noncommercial radio broadcast service (*New York University*, *supra*).

57. In a recent case, the Board once again relayed the criticism of many noncommercial applicants that what has evolved as the standard noncommercial comparative issue is "vague," "amorphous," and "meaningless." *Black Television Workshop of Santa Rosa, Inc.*, 65 RR 2d 34, 35 (Rev. Bd. 1984)(late printing). We there chronicled the many Commission policy statements directed to noncommercial broadcasters that have been released since the issuance of *New York University* and *Pacifica Foundation*, and we suggested that "a cohesive, comprehensive, and up-to-date policy synthesis is needed." 65 RR 2d at 36. In the meantime, this case comes before us on the older, unrevised comparative issue; and, as anticipated, the instant applicants clash vehemently on the construction and the application of that comparative issue.

A. *FACTORS TO BE CONSIDERED*

(1) *Integration of Cultural and Educational Objectives*

58. In finding and concluding that SPS had successfully shown the integration of its educational and cultural objectives into its station, the ALJ accepted that SPS's primary "educational" objective was the vocational training of students, *I.D.*, paras. 19-50, and he determined that the SPS operation would help students "to acquire and develop the technical as well as the interpersonal skills required for success in the broadcast field." *Id.*, at para. 301 (*see also id.*, paras. 300-303). By contrast, the ALJ found that Straw had no cognizable "educational" program beyond its desire to broadcast the "alternative" programming typified in paragraph 212 of the *I.D.* (and reprinted *supra*, para. 8). Invoking the Commission's noncommercial application processing guidelines,[62] the ALJ faulted Straw under this initial prong for its failure to propose either "instructional" or "general educational" programming as defined in the application processing guidelines, *I.D.*, paras. 212-213, 295-299, despite the fact SPS appears to have proposed neither category of programming itself. The ALJ explained his disparate approach this way:

> A major issue in this proceeding, therefore, is to determine the extent of integration of each of the proposed stations into the cultural and educational objectives of the respective applicants. *Southeastern Bible College, Inc.*, 85 FCC 2d 936 (Rev. Bd. 1981), *review denied*, FCC 82-271 (released June 11, 1982). Where, as here, one of the applicants is an educational *institution* and the other an educational *organization*, the issue is the same for each party, but the required showings are different.

Id., at 296 (emphasis in original). He amplified by opining that, whereas SPS was an educational *institution* and had shown how its vocational training program was integrated into its station operation:

> Jack Straw, on the other hand, is an educational organization. The showing requried of an educational organization under the standard noncommercial comparative issue is to "demonstrate that [it has] an educational goal and [is] committed to the advancement of an educational program." *Processing Guidelines*, 43 Fed. Reg. at 30845. The Commission has stated that educational organizations serve the public interest through educational programming, the suitability of which is measured with primary emphasis on programming categorized as "instructional" and "general educational."

Id., at 298. Straw grieves that the ALJ applied a double standard that denied it an even-handed comparative appraisal, and complains[63]:

> According to the *ID*, an institutional applicant will receive maximum credit under the comparative issue merely by proving that it is an educational institution, *i.e.* that it will carry out educational "objectives" or "functions," regardless of what its programming may be. An educational organization, by contrast, must demonstrate that it will advance an educational "program" by broadcasting some unspecified quantum of "instructional" and "general educational" programming. This reasoning is patently flawed and highly discriminatory.

SPS defends the ALJ's mode, and rejoins[64]:

> Jack Straw is wrong. Neither type of applicant is automatically preferred. As the ALJ held, once the institutional applicant has established that it operates an educational facility and the organizational applicant has established that it has an educational program, *both* applicants must establish that the proposed operation of the station will be integrated into that applicant's stated educational objectives. (*I.D.* para. 296) The showings required of the two are not the same, but one is not more onerous than the other; it is merely different. In any event, Jack Straw's claim that it was denied "its right to a 'full hearing'" because each applicant was not evaluated on the same basis is without merit. Each applicant had the opportunity (and the burden) to establish that it met the relevant criteria; Jack Straw simply did not try to (or perhaps could not) do so.

By applying one comparative standard to SPS, because it is an educational *institution*, and another to Straw, because it is an educational *organization*, Straw generally asserts that "[t]he results are topsy-turvy because the comparison is higgledy-piggledy."[65]

59. "Well roared, Lion!"[66] For we find more than a trace of legitimacy in Straw's lament. The Board again readily admits that the dimensions of this prong of the standard noncommercial comparative issue lack lapidary facets. In soliciting the Commission's review of the entire sphere of noncommercial comparative cases, the Board's *Black Television Workshop of Santa Rosa* decision posed the rhetorical question at live conflict here: "If the 'overall cultural and educational objectives' of applicants are to be compared, what criteria should be used?" 65 RR 2d at 36. In the earlier *Southeastern Bible College*, *supra*, the there-presiding ALJ also stumbled over this initial prong. *See id.*, 85 FCC 2d at 956-957. Nonetheless, this ALJ's use of the Commission's basic licensing eligibility guideline as a comparative standard has produced an anomalous result. First, we note that the Commission's original *Hearing Designation Order* in this case pointedly questioned Straw's basic eligibility to operate on a reserved noncommercial frequency, and it specially required Straw to "submit an exhibit stating how the proposed station would be used for the advancement of an educational program." *See* 103 FCC 2d at 867-868. Presumably, Straw's submission satisfied the Commission, because its reconsideration *Memorandum Opinion and Order* does not again question Straw's basic eligibility. Second, the ALJ himself mediated a subsequent attack at hearing on Straw's basic eligibility for its alleged lack of "instructional" or "general educational" programming, yet he staunchly decreed:

> In order to qualify as an educational organization, it is not necessary that the proposed programming be exclusively educational. Section 73.503 also authorizes the transmission of cultural and entertainment programs. *See Lower Cape Communications, Inc.*, 47 RR 2d 1577 (1980); *see also Florence Bridges*, 44 RR 2d 667 (1978). *Way of the Cross*, 58 RR 2d 455, 457 (1985), cited by School System does not lend support to School System's position.

Memorandum Opinion and Order, FCC 86M-2665, released August 29, 1986, at para. 3. But, when he subsequently reached the *I.D.*, the ALJ rejected Straw's proffered menu of "cultural" programming, and he comparatively downgraded Straw for its lack of "educational" programming, *I.D.*, paras. 210-214. There, citing *Way of the Cross* (as well as the noncommercial eligibility processing guidelines), the ALJ held that "Straw's proposed 'educational program' does not satisfy the Commission's requirements for the licensing of educational organizations to operate on reserved frequencies." *I.D.*, at para. 304; *see also id.*, paras. 305-308.

60. While we do not necessarily disagree that, based on this record and by the strict reckoning of *Way of the Cross*, Straw's basic noncommercial eligibility waxes somewhat dubious, we believe that once the Commission and the ALJ refused to add this threshold issue, it was inconsistent to reapply the basic eligibility standards under the first prong of the standard noncommercial comparative issue. In any event, SPS has filed no exception to the ALJ's refusal to add a basic eligibility issue against Straw, so the matter is not before the Board in an adversary posture. Assuming *arguendo* that Straw is basically qualified,[67] we find that - unless and until the Commission further clarifies the truest intent of this prong of the noncommercial comparative issue - Straw's proposed programming exhibit embraces all that can be said about that organization's cultural and educational objectives (*see* *I.D.*, paras. 213-214), and mutely suggests the manner in which Straw's objectives, such as they are, would be met by the station. As rehearsed in the previous section of this decision, the Commission has formally recognized that noncommercial broadcasters come in a legion of shapes and sizes, and it has refused to straitjacket such an entity into specific types of programming, once it finds that entity basically eligible. If Straw is basically eligible, we cannot say definitely that its showing under this prong was innately deficient.

61. In bold relief was the ALJ's treatment of SPS, upon whose vocational training function the ALJ relied mightily in holding that it was superior under this initial prong. *I.D.*, paras. 300-303. Although, as we have stressed, an educational institution may surely use its frequency for such purposes, and we emphatically do not discourage such use, it appears from all that has been written that the Commission's meaning, when discussing a noncommercial licensee's "educational and cultural objectives," is that such objectives are assumed to be directed outwardly to the station's listening community, and not directed exclusively to the licensee itself. Put another way, based upon our interpretation of the Commission's ap-

plication processing guidelines and the other germane material, the Commission conclusively presumes that an educational "institution" is possessed of an organic mission to use the frequency to educate the masses and to disseminate cultural enlightenment to the general populace, *i.e.*, those that do not physically attend the institution. This Commission insight is evidenced not only in the many policy statements we have referenced in paragraphs 11-15, *supra*, but in the way agency adjudicators have conventionally applied the noncommercial comparative standard. Thus, in evaluating competing applicants under this first prong of the comparative issue in *Southeastern Bible College*, that ALJ observed that one applicant (Glen Iris) intended - like SPS here - to have its students operate the station as part of the school's curriculum. But, he favored the competing applicant (Southeastern) which would *"extend to the community at large the resources of the institution."* 85 FCC 2d at 957 (emphasis added); *accord*, *New York University*, 19 FCC 2d at 368 (school's programming would "bring to the metropolitan community the resources of the university).

62. SPS's vocational training curriculum, by itself, does not transport the school system's educational resources to the listening community, and its primary "educational" objective is inward-looking rather than outward-looking. The Board acknowledges that much the same may be said of a noncommercial licensee that occupies its facility chiefly for "in-school instructional purposes," but even there the "educational objective" is tied to the programming that comes out of the radio receiver, rather than on the internal process behind the transmission. Here, we believe that though the term "educational objectives" may be ambiguous (as are many other aspects of this issue, *see Black Television Workshop of Santa Rosa)*, we do not consider the SPS vocational training function, as such, to be a satisfactory response to this first prong of the comparative issue.

63. At the same time, the SPS past and proposed operation does regularly utilize its students to prepare and present programs of special interest and relevance to the community-at-large. The ALJ found that SPS's other "educational objectives" include "communicating with young people" through the propagation of teenage perspectives on common problems "and reaching, through its programming, a racially and ethnically diverse audience." *I.D.*, at para. 302. These collateral goals, we believe, are much more in keeping with the Commission's purpose in examining whether an applicant's "educational objectives" will be integrated into the operation of the station.

64. Consequently (and assuming *arguendo* Straw's threshold eligibility), we find that both applicants have explained as best they can the manner in which they intend to integrate their disparate educational and cultural objectives into station operation. Because, as in *Southeastern Bible College*, "[t]he two proposals are quite different . . . in terms of the service being offered," 85 FCC 2d at 957, a stable comparison is difficult, we hold that neither proposal is perspicuously superior under this exceedingly blunt prong. Straw's objectives appear more community-oriented, but not "educational" in the strict sense that the Commission has customarily defined that term, while SPS's primary "educational objectives" are rather internalized. Both would thus seem to have their idiosyncratic frailties and neither will be preferred on this first prong.

(2) *Meeting Community Needs*

65. In paragraph 36, *supra*, we described the process by which SPS ascertained the needs of the local community and planned programming to respond to those needs. At *I.D.*, para. 311, the ALJ relates the SPS "promise to continue to ascertain needs and interests and to air programs responsive thereto." Having found no problem with SPS's ascertainment and response reflexes during the subject license term, we agree with the ALJ that SPS's promise to monitor community needs by similar methods in the future portends an operation continually attuned to local needs, problems and interests.

66. Straw's proposal for meeting community needs was discredited by the ALJ, who found that Straw conducted no widespread survey of community leaders or the general public, and had not identified pressing issues facing the community. *Id.*, para. 216. He also found that Straw's proposed programming responded to entertainment preferences rather than local issues, as that term is used by the Commission, *id.*, para. 217, and that even Straw's proposed public affairs programs were not linked to ascertained local needs and problems. *Id.*, para. 219. In his comparative evaluation, the ALJ concluded that "Straw has failed to meet its burden of demonstrating that its proposal will meet the needs of the community as that phrase is traditionally understood," *id.*, at para. 315, and he thus favored SPS decisively under this second prong.

67. Straw submits that the ALJ myopically misconstrued this second prong by limiting its scope to nonentertainment programming keyed to an ascertainment process, and it asserts that it may here include "the need for a vast array of general educational, informational and cultural programming . . . ."[68] Straw claimed at hearing that its proposed programming (derived from a 1983 program guide for its former KRAB-FM) was selected by way of its "regular contact with a variety of ethnic, cultural, arts, and 'cause' organizations in Seattle," *I.D.*, at para. 217, as well as through a perusal of the newspapers and other media to see what other stations were programming. It is true that, under the 1976 *Ascertainment* standards in effect at the time of Straw's application filing, the Commission afforded noncommercial radio applicants great leeway in adducing community needs, and it expressly permitted the use of "any reasonable methods designed to provide them with an understanding of the problems, needs and interests of their service areas." *See supra* para. 35. Paradoxically though, while Straw's critique of KNHC-FM's past programming relied directly upon *Simon Geller* for the proposition that a prerequisite to issue-responsiveness is "a determination of community needs and interests through previous ascertainment,"[69] Straw's own exceptions replicate in remarkable degree Simon Geller's error of confusing entertainment programming preferences with ascertained local problems and needs. It is recalled to Straw that, in *Simon Geller*, the licensee likewise interposed his continuous contact with regular listeners and consultation of newspapers in selecting his programming. *See* 90 FCC 2d at 252. Geller, much as Straw here, also asserted that his entertainment format satisfied a demonstrable local demand, *id.*, at 262, but the Commission found Geller's entertainment format irrelevant to the deeper question of local community needs. *See id.*, at 255-257, 264-267. And, like the two noncommercial applicants in *Southeastern Bible College* who were given little acclaim under this second prong of the

noncommercial comparative issue, Straw's assessment of community needs "rest[s] on untested presumptions rather than on evidence of record." 85 FCC 2d at 958.

68. Ergo, we concur with the ALJ that Straw has not linked its proposal to reasonably ascertained community needs. While we certainly do not suggest that a noncommercial applicant cannot meet this second prong of the comparative issue with "cultural" and "general educational" programming, it must at least show that it has broadly surveyed (in a flexible fashion) its community, and that its proposal is responsive to that survey, not simply to its own esthetic proclivities or to the entertainment preferences of a select few. Entertainment formats freely come and go, and audience preferences wane. Local problems and needs also change, and an applicant or a licensee must demonstrate a reasonable method of monitoring and responding to those immediate matters. *Compare Pacifica Foundation*, *supra*, 21 FCC 2d at 219-220 (noncommercial applicant satisfactorily surveys community). The Board appreciates that, shortly after the filing of these two competing applications, the Commission's 1984 *Deregulation Order*, *supra* para. 8, removed the requirement of a formal ascertainment process for noncommercial broadcasters. Howbeit, the Commission did "retain the basic issue-oriented programming responsibility" on all noncommercial licensees. *See supra* note 30.[70] Although the Commission's then-prevailing ascertainment requirements for Straw were not rigid, they were not vapor, and Straw's showing here was seriously flawed. *See Committee For Community Access*, *supra*, 737 F.2d at 77-78. SPS was correctly favored on this second prong.

(3) *Other Factors*

(a) *Proposed Hours of Operation*

69. As indicated earlier, the Commission has reviewed proposed hours of operation on a comparative basis, *Simon Geller*, as has the Board, *Minneapolis Star & Tribune Co.*, *supra* note 39, to determine whether the competing applicants propose substantial operating differences. Unlike our discussion in paragraphs 25-28, *supra*, our focus here is on applicant proposals for the future and not upon past performance. The *I.D.* is somewhat unclear as to SPS's 1984 proposal: the ALJ wrote that, by March 1983, KNHC-FM was regularly operating more than 84 hours per week, and at hearing the station's General Manager testified:

> By mid-March [1983], the station was operating consistently more than 84 hours per week, although we did not consistently operate 12 hours a day until April 8, 1983. The station currently operates from 8:00 am to 11:00 pm Sunday through Thursday (15 hours) and from 8:00 a.m. to 12:00 midnight or later on Friday and Saturday (at least 16 hours) for a minimum of 107 hours per week.

SPS Exh. 1 at 14.[71] At the time of the hearing, SPS was regularly broadcasting approximately 107 hours per week, a figure both the Mass Media Bureau and SPS counsel confirmed at oral argument. *See*, respectively, Tr. of Oral Arg. at 2792, 2812. Other witness testimony reflects that SPS's proposal was to maintain that schedule. *See, e.g.*, SPS Exh. 3 at 1, 15 (testimony of T.J. Vassar).[72]

70. Straw's proposed hours of operation are embodied in its time-share proposal, and are therefore wrapped around the ordinary 8:00 AM - 3:00 PM school day. As we discern its proposal, Straw seeks to operate the station from 6:00 AM to 8:00 AM and from 3:00 PM to 3:00 AM weekdays, as well as from 6:00 AM to 3:00 AM at all other times. *See* Straw Application, FCC Form 340, refiled May 22, 1984, at Section 1, Question 4 & Exhibit No. 1 thereto; *see also I.D.*, para. 227; Straw Exh. 35. Because Straw's proposed hours of operation (approximately 112 hours per week during the school year) were not intended to wholly displace SPS, to whom Straw would routinely cede 35 hours per week, the usual comparison of proposed hours of operation is neither equitable nor possible. That is, if we hypothetically compared SPS's 107 hours per week with Straw's raw 112 hour per week proposal, no significant difference arises. However, we believe it is only fair and appropriate to consider Straw's proposal on its own terms, *viz.*, as a supplementary time-share proposition, which we do *infra*, paras. 78-82.

(b) *Comparative Signal Coverage*

71. Straw excepts to the ALJ's refusal to award it a decisive preference for superior comparative signal coverage. The *I.D.* held that Straw was not entitled to any credit for its coverage proposal since it had not demonstrated that it could implement its technical proposal and, in any event, because coverage "is of only minor import" in noncommercial educational cases. *I.D.*, paras. 318-321. Straw maintains that it would provide substantially greater service to underserved areas and superior overall coverage,[73] and that the ALJ's denial of credit is contrary to the mandate of Section 307(b) of the Act and the holdings in *New York University*, 10 RR 2d 215 (1967); 10 FCC 2d 53 (Rev. Bd. 1967); 19 FCC 2d 358 (Rev. Bd. 1969). It submits that Section 307(b) factors are applicable in noncommercial cases, that reception service superiority may be determinative under a Section 307(b) issue, and that its coverage proposal should have resulted in a dispositive comparative preference. It goes so far as to argue that the decisive coverage preference it warrants under the mandate of Section 307(b) would outweigh the purely comparative factor of any renewal expectancy earned by the School System, because "otherwise determinative standard comparative advantages cannot overcome such a fundamental licensing objective."[74] We agree with the ALJ that Straw is entitled to no credit whatever for its particular coverage proposal.

72. While it is true that a clear Section 307(b) preference will normally outweigh standard comparative considerations, *see FCC v. Allentown Broadcasting Corp.*, 349 U.S. 358, 360-62 (1955); *WHW Enterprises, Inc. v. FCC*, 753 F.2d 1132, 1135 (D.C. Cir. 1985), Straw errs fundamentally in seeking to apply this general principle in the unprecedented setting of the case at bar. In its recent holding in *Faye and Richard Tuck, Inc.*, 3 FCC Rcd 5374 (1988), the Commission summarized the cardinal mandate of Section 307(b) as follows:

> Section 307(b) requires the Commission to "make such distribution of licenses . . . among the several States and communities as to provide fair, efficient and equitable distribution of radio service . . . ." 47 U.S.C. §307(b). *Thus, whenever applicants specify different communities of license for their proposed sta-*

> *tions, the Commission first compares the needs of the respective communities for radio service . . . .* The need for service concerns both the number of stations that can be received in a given area (reception service) and the availability of local outlets for self-expression in the community (transmission service).

Id. at 5376 (emphasis added). Thus, Section 307(b) is normally invoked only where competing applicants specify separate communities, and it becomes necessary to determine which community has the greater need for a new station. It is not surprising, therefore, in this case where both applicants seek to serve the same community - Seattle - that the Commission did not specify a Section 307(b) issue in either of its two hearing designation orders, and that no party has petitioned to add such an issue. Straw's strenuous arguments to the contrary notwithstanding, Section 307(b) in its pure form is simply not part of this case.

73. Despite this seemingly irreducible obstacle to its contention that it is entitled to a determinative Section 307(b) preference, Straw argues that the holdings in *New York University* support its position. Not so. *New York University* involved two noncommercial applicants seeking to serve separate communities -- New York City and Teaneck, New Jersey -- on the same frequency. The Commission there stated that the fact that the competing applicants were located in different communities "on its face, raises in the traditional sense a 307(b) issue," and the issue was therefore designated. 10 RR 2d at 216. Nevertheless, the Commission narrowed the customary 307(b) focus. Because it was "not persuaded that our traditional areas and populations, and other available services criteria are appropriate" when dealing with competing noncommercial educational applicants, the Commission modified its designation order so that only other noncommercial services would be considered under the 307(b) analysis. *Id.*, at 216-217. Although Straw points out that the Board's subsequent decision in *New York University* stated that it did not consider that the "factors relating to 307(b) have no or little significance," 19 FCC 2d at 371, the Board, cognizant of the Commission's non-traditional approach to 307(b), also held that "[w]e do not believe that this fundamental [noncommercial comparative] issue should be contingent on the outcome of the areas and populations issue" in view of "[t]he diminished importance of the traditional Section 307(b) concepts" in a noncommercial case. 10 FCC 2d at 56.

74. Apart from prime Section 307(b) considerations, we must next consider whether Straw's claim to a coverage preference is impeded by the fact that there is no explicit comparative coverage issue designated in this case. The Commission, in modifying its designation order in *New York University*, not only altered the traditional 307(b) issue, but it also stated with reference to the comparative issue: "nor are we persuaded that the factors involved in the usual standard comparison [under the 1965 *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393] are appropriate in the context of this proceeding." 10 RR 2d at 216. Accordingly, in adopting new comparative issues to govern noncommercial comparative cases, the Commission held: "In adopting these issues in a case of first impression, we further note that our standard comparative criteria (local residence, integration, broadcast experience, diversification, etc.) are virtually meaningless in a case of this type." *Id.*, at 217. The new comparative issues it substituted have been applied, with some modifications, in all noncommercial comparative cases designated to date, including this one. Comparative signal coverage, a factor routinely considered under the 1965 commercial *Policy Statement*, normally comes into play when the designation order specifically declares that there are substantial differences in the proposed service areas which may be considered at the hearing. *See, e.g., Barton Broadcasting Co.*, 104 FCC 2d 785, 799 (Rev. Bd. 1986); *Northern Sun Corp.*, 100 FCC 2d 889, 897 & n.2 (Rev. Bd. 1985); *Cannon's Point Broadcasting Co.*, 93 FCC 2d 643, 644 & n.2 (Rev. Bd. 1983). Despite the readily apparent differences in the coverage proposals in this case, however, the instant hearing designation orders provide no instructions in this regard. On the other hand, the designated comparative issue does contain the broad "other factors in the record" language, pursuant to which the ALJ considered coverage evidence. While we are mindful of the Commission's two-decade old admonition that its standard commercial comparative criteria are "virtually meaningless" in the context of a noncommercial proceeding, we will assume, *arguendo*, in view of the potential coverage differences in the record and our duty to weigh all decisional factors, *see Johnston Broadcasting Co. v. FCC*, 175 F.2d 351 (D.C. Cir. 1949); *Alexander S. Klein, Jr.*, 86 FCC 2d 423 (1981), that a significant signal coverage advantage should be considered under the "other factors" prong of the standard noncommercial comparative issue. *Cf. Noncommercial Educational FM Broadcast Stations*, 70 FCC 2d 972 (1979)(increased FCC concern with spectrum efficiency on noncommercial FM frequencies).

75. Assuming, then, that Straw is entitled to claim a coverage preference, we must address the ALJ's additional and independent ground for rejecting Straw's particular proposal as also being technically unacceptable. In its application, Straw proposed to locate its transmitter site on Cougar Mountain in King County. It developed at the hearing, however, that in May 1985 King County had imposed a total moratorium on the issuance of permits for the construction of radio facilities on the Cougar Mountain site pending the adoption of new more stringent RF radiation standards. Tr. 2268-2271; *see also* Straw's April 6, 1987 Memorandum in Support of Coverage Evidence, Att. 1, Exh. A at 2. In view of this circumstance, the ALJ afforded Straw an opportunity at the hearing to make a showing that King County would permit it to implement its technical proposal. Tr. 2701-2703. In response, Straw submitted a "Memorandum in Support of Coverage Evidence" on April 6, 1987. The ALJ found, however, that Straw had not obtained a statement from the county that, even in the absence of the moratorium, it would receive the requisite use permit, nor had it shown that it could implement its proposal consistent with the 110 uW/cm2 radiation standard currently in effect for Cougar Mountain or the 200 uW/cm2 radiation standard expected to be adopted for King County as a whole. Having failed to show that its present proposal could be implemented, and not having amended its application to offer an alternative proposal, Straw's coverage proposal was not credited. *I.D.*, paras. 225-226, 319. Straw's exceptions argue that its proposed antenna location on Cougar Mountain is available; that denying it coverage credit because it could not obtain advance approval of a King County conditional use permit contravenes Commission precedent holding that local approval to use a site will be presumed in the absence of

evidence that local authority has denied such a request, citing, *inter alia*, *Arizona Number One Radio, Inc.*, 103 FCC 2d 550 (Rev. Bd. 1986), *review denied*, 2 FCC Rcd 44 (1987), *aff'd sub nom. Interstate Broadcasting System of Arizona, Inc. v. FCC*, 836 F.2d 1408 (D.C. Cir. 1988)(table), and *Alden Communications Corp.*, 3 FCC Rcd 3937 (1988); that once the moratorium is lifted, it believes its use application will be granted; that it could not have amended its application previously because it does not know what radiation level will eventually be found acceptable; and that it was therefore unreasonable for the ALJ to impose an obligation on it that was impossible for it to meet.

76. To begin with, there is little question that Straw has reasonable assurance of its proposed Cougar Mountain site (*qua* site). *See I.D.*, para. 319. The unusual glitch is whether Straw will ever be able to provide its claimed superior coverage from that site, in view of the yet-existing moratorium and the uncertainty regarding precisely what radiation standards will eventually govern even if the moratorium is lifted. Straw analogizes its situation to the so-called zoning cases, which hold that zoning objections to proposed transmitter sites will not be considered absent a "reasonable showing that the applicant will not be able to obtain approval of his plans from the local authorities." *Lester H. Allen*, 20 FCC 2d 478, 481 (Rev. Bd. 1969). These cases are predominantly concerned with the more basic question of a site's availability, rather than whether, as here, reliance on that site for a dispositive comparative preference is too speculative and remote. The local approval problem here, unlike the zoning cases, presents a unique double barrier. Despite Straw's sanguine speculation that it could meet *whatever* standards are eventually imposed on its site, and we read the letter from King County attached to Straw's hearing submission as completely noncommittal on this point (*see* Straw Memorandum in Support of Coverage Evidence, Att. 1, Exh. B), we know absolutely that a complete ban on issuance of any use permits for radio facilities now exists. We also know that Straw's proposal of record concededly fails to meet the radiation standard even now in place on Cougar Mountain. Straw argues that it cannot reasonably be expected to amend its application proposal to meet an undetermined standard. By the same token, Straw has been on notice since before the hearing commenced that its proposal could not satisfy the present radiation limits, and that more exacting standards could be expected once the moratorium is lifted. Thus, unlike the situations presented in such cases as *Alden Communications Corp.* and *Arizona Number One*, *supra*, where applicants took the steps required by government agencies in applying for land use, King County here will not even accept further applications for use of Cougar Mountain until its moratorium is lifted and specific radiation standards are adopted. In short, even if coverage evidence was properly taken in this case, it is entirely too speculative and uncertain to award a comparative coverage preference to an applicant where an absolute moratorium exists on the issuance of use permits at Straw's chosen site, and the standards to be adopted for permissible levels of radiation from that site are indefinite. In these circumstances, Straw's bald assurances that it could meet whatever standards are imposed are equally speculative, and were rightly rejected by the ALJ.[75]

B. ***Summary and Conclusions***

77. Under the standard noncommercial comparative issue, we have determined that neither party is superior under prong (a), that SPS is to be favored under prong (b), and that, were Straw's comparative coverage advantage not so hypothetical, it would receive a substantial preference under prong (c). However, even assuming we were to credit Straw's comparative coverage, that is only one factor under the tripartite noncommercial comparative issue. We have agreed with the ALJ that Straw has shown insufficient attention to the underlying public purpose of its potential signal by failing to properly ascertain the needs and problems of its community, *see Southeastern Bible College*, and relied too simply on the entertainment preferences of itself and its select followers. *See Simon Geller*. Overall, then, and even assuming a comparative coverage preference, the best Straw would achieve is a moderate preference under this comparative issue, taken as a whole. If its signal coverage is not credited, and we do not believe it should be, SPS would have a slight preference under this comparative issue, taken as a whole.

IV. TIME-SHARING ISSUE

78. The ALJ refused to impose an involuntary time-sharing arrangement on SPS, because he found (1) that Straw had not justified "its proposed schedule based on the hours it need[ed] to achieve its educational objectives," *I.D.*, at para. 235; (2) that Straw's proposal "was based on the premise that the School System 'authorized funding for and used' the station only for vocational training carried out 'when students and teachers were at school'," but Straw had not corroborated that (erroneous) premise, *id.*, at para. 236; and (3) that Straw claimed it needed morning and afternoon "drive time" hours to survive, but the record evidence did not substantiate that claim. *Id.*, para. 237. He concluded also that SPS needs its current hours of operation for its vocational training objectives, *id.*, para. 324, and that "its current hours of operation are essential to enable it [to] continue to meet the needs and interest of its listen audience *Id.*, at para. 325. In that latter connection, the ALJ adverted to "lengthy student-produced public affairs programs during after-school hours," and he held (*id.*):

> Moreover, community leaders who want to reach teens and young adults have come to KNHC because they know their target audience is listening. Loss of the after-school and weekend hours would jeopardize the ability of the station to reach these young people.

79. Straw first contends that the time-share issue (Issue 3) designated by the Commission is superior to the comparative issue (Issue 4), and that "[t]he *I.D.* errs by subordinating the time-sharing issue to the comparative issues and by failing to consider that time-sharing is favored under Commission policy because it tends to increase the diversity and efficiency of a channel's use."[76] Second, Straw submits that "for a considerable portion of its last renewal term SPS operated at less than the minimum schedule which the Commission has set,"[77] and that Section 73.561(b) therefore mandates the imposition of time-sharing. And, third, Straw asserts that the *I.D.* makes no findings "that support the conclusion that time-sharing

would not be a more 'effective' use of the channel."[78] Straw thus concludes that the ALJ defaulted in his duty to order a time-sharing arrangement from one of the four Straw-devised plans[79]:

> (1) an arbitrary division of time such as that ordered by the Review Board in *Southeastern Bible College, Inc.*, 85 FCC 2d 936 (1981); (2) SPS's proposal to allow Jack Straw only those hours during which SPS does not currently operate; (3) Jack Straw's proposal to use the channel at all hours other than school hours on school days; and (4) a division of time which would license SPS during those hours during which *students* operate the station (8:00 a.m to 8:00 p.m. weekdays) and license Jack Straw at all other hours.

Straw quickly discounts its own options (1) and (2), favors option (3), but would reluctantly accept option (4).

80. SPS replies to Straw's "issue-inversion" argument by citing the Commission's revised designation language which states that any potential time-sharing requirement turns upon "whether the grant of either the School System's renewal application or Jack Straw's full time application will better serve the public interest."[80] It answers Straw's second exception by noting that the Commission directed the ALJ to consider whether the seven-month, reduced operating period was merely temporary. As to the third, SPS maintains that, even if time-sharing were to be ordered, any such order would be limited to those hours the existing licensee has not been regularly using. The Mass Media Bureau excuses SPS's temporary reduction in operating hours from the 84 hour per week level as "beyond the control of the licensee" because of a lacuna in state funding.

81. We will dispose of the Mass Media Bureau's comments first. We agree, as a general matter, with Straw that lack of funding is not a basis for failing to meet Commission operating standards. This was made clear in *Simon Geller*, *see* 90 FCC 2d at 265, and epitomized in the noncommercial case of *KQED, Inc.*, where the Commission's refusal to consider that public station's funding problems provoked the licensee into misrepresenting the real financial reason for a temporary cessation in operations. If anything, insufficient operating funds - if persistent - would seem a valid reason *for* ordering time-sharing, not *against*. However, SPS's reduction in license-term hours below 84 per week was evanescent, and Straw's insistence that the seven-month dip requires a time-share order is no more than a rehash of its prior assertion that Section 73.561(b) is mandatory rather than permissive, a contention flatly rejected by the Commission in both hearing designation orders. Further, we accord with SPS that even if time-sharing were ordered because of temporal underutilization of the frequency, we would do no more than permit Straw to operate during the hours SPS was not then regularly using. *See Noncommercial Educational FM Broadcast Stations*, *supra*, 69 FCC 2d at 254-256, *on reconsideration*, 70 FCC 2d at 972-973, 982. Nothing in that document adopting Section 73.561(b), or in the rule itself, promotes Straw's intrepid *tour de force*, whereby it would unilaterally tailor the licensee's regular operating hours to fit Straw's desired form.

82. But for SPS's seven-month hiatus from its ordinary 84 hour per week schedule, no time-sharing issue would have been designated. *Hearing Designation Order*. Once the ephemeral nature of that dip was established, and SPS's regular 107 hour per week proposal established, no further consideration of Straw's preferred arrangement was necessary. Section 73.561(b) bespeaks solely of quantitative frequency utilization, not of qualitative comparisons. The latter evaluation is subsumed under the standard noncommercial comparative issue. Finding SPS's past and proposed hours of operation sufficient under the rule, this issue all but decides itself in favor of the licensee. While nothing enjoins Straw from continuing to negotiate with SPS towards a cooperative shared-use of its frequency, the choice remains with the licensee so long as it maintains an 84 hour per week operating schedule.

V. ULTIMATE CONCLUSIONS

83. In the prologue to its exceptions, Straw vexes[81]:

> This case opens Pandora's box, and out come the dreaded questions. What is noncommercial broadcasting? What determines whether a noncommercial broadcast station should receive a renewal expectancy? How should that renewal expectancy be weighted against Section 307(b) or comparative factors? What do the noncommercial comparative factors mean? How can they be applied in an even-handed fashion? When should time-sharing be ordered? What factors should be considered in setting the terms and conditions of a time-share arrangement? What ascertainment methods are required for noncommercial broadcasters?

This proceeding, as Straw fairly muses, has compelled us to burrow extensively into the various Commission policies covering noncommercial broadcasting. What we have found is that resolution of Straw's prefatory queries are not, in most instances, as perplexing as Straw portends, albeit not convenience-packaged in any single noncommercial comparative renewal case. The controlling law and policies are largely in place, if not in one place. We cumulatively recapitulate our determinations.

84. The Board has affirmed the ALJ's award of a strong renewal expectancy to SPS. The licensee has systematically ascertained the local needs and problems of its community of license, and it duly established a reasonable procedure for responding thereto with programming throughout the subject license term. Moreover, KNHC-FM served as an electronic outlet for local self-expression for several Seattle schools, its students, and others, including those catering purposefully to minority segments of the population. Its operating record is free of rule or policy violations. One contrapositive is the total replacement option offered by Straw. Like the ALJ, we have found that Straw has failed to thoroughly ascertain local needs and interests, as that term has been used consistently by the Commission, and greatly based its comparative candidacy upon mere "alternative" entertainment program preferences. This ranks it below SPS on prong (b) of the standard noncommercial comparative issue. Next, for the reasons we and the ALJ have discussed, the Board shall not credit Straw's requested comparative coverage preference; its technical proposal is, even at this

very late juncture, entirely too speculative to register. *See also supra* note 75. If, however, we were to register Straw's potential signal coverage advantage, Straw would be entitled to a moderate preference overall under the standard noncommercial comparative issue.

85. Even so, we have declined to impose either of the two time-sharing arrangements sought by Straw, which would coerce SPS to abandon up to 72 hours of the 107 hour week it has proposed, leaving SPS with only a 35 hour per week operating window. Although SPS did dip below 84 hours per week for seven months of the subject license term, this was a relatively brief interlude; and, since March 1983, SPS has operated regularly for more than 84 hours per week. Consequently, we do not believe that the triggering mechanism of Section 73.561(b) should be fired against the will of the licensee, especially in the illiberal manner proposed by Straw. That regulatory mechanism is tethered fast and solely to hours of operation, and not to extrinsic qualitative considerations. *See Hearing Designation Order*.

86. In the end, we have before us the periodically-filed license renewal application for KNHC-FM. In its initial installment of a pivotal comparative renewal contest, the court etched a governing principle for the edification of license renewal applicants, license challengers, and the Commission:

> The only legitimate fear [of nonrenewal] which should move licensees is the fear of their own substandard performance, and that would be all to the public good.

Central Florida Enterprises, Inc. v. FCC, 598 F.2d 37, 61-62 (D.C. Cir. 1978). Where a noncommercial renewal applicant has not met Commission standards, we have replaced the incumbent with a license challenger. *KQED, Inc., supra*. Here, we might by no objective appraisal grade the SPS license-term performance as "substandard"; it has kept faith with Commission canon, and could not have anticipated an afflictive treatment.

87. Furthermore, at the court's express invitation, *Pillar of Fire* has declared that even an otherwise wholly dispositve Section 307(b) advantage cannot defeat a well-earned license renewal expectancy. *See* 2 FCC Rcd at 520-521 & n.21. *A fortiori*, any lesser comparative signal coverage preference to Straw would be insufficient on this record to uproot KNHC-FM from the frequency it has occupied since 1971. As the ALJ reports, SPS has invested an enormous level of money and effort in its FM radio station, *see I.D.*, paras. 20-21, and no licensee that has utilized its investment in virtuous accord with Commission rules and public service policies should bear the unacceptable risk of consummate loss, simply because it might be technically trumped at renewal time. No reasonable person or entity would invest a dollar or a moment's labor were that a perpetually pregnant possibility. *See Chicago Federation of Labor, supra; Central Florida Enterprises*. Taken nearly at its most favorable, Straw's comparative proposal does not outweigh the SPS record of proven performance.

88. ACCORDINGLY, IT IS ORDERED, That the Joint Motion to Correct Transcript of Oral Argument filed on November 30, 1988 by Seattle Public Schools, Jack Straw Memorial Foundation and the Mass Media Bureau IS GRANTED; and

89. IT IS FURTHER ORDERED, That the application of Seattle Public Schools (File No. BRED-830922AQ) for renewal of license for noncommercial broadcast Station KNHC(FM), Seattle, Washington IS GRANTED, and the application of Jack Straw Memorial Foundation (File No. BPED-840103AR) IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

FOOTNOTES

[1] At the conclusion of the Board's oral argument, the parties were afforded two weeks within which, and under the auspices of the Mass Media Bureau, to reach an amicable settlement of this proceeding. Tr. of Oral Arg. at 2826-2829. However, by letter dated November 17, 1988, the Mass Media Bureau informed the Board that no settlement appeared feasible.

[2] In addition to SPS's KNHC-FM, the Commission has licensed KCMU-FM, 90.3 MHz, to the Regents of the University of Washington. BROADCASTING/ CABLECASTING YEARBOOK, 1988 at B-301-302. It appears that the University of Washington is also licensed to operate KUOW-FM, Seattle, on commercial frequency 94.9 MHz. *Id.*, at B-302.

[3] BROADCASTING/CABLECASTING YEARBOOK, 1988 at B-299.

[4] The Commission there noted that KNHC-FM had operated at least 12 hours per day from January 1, 1980 through August 31, 1982, and from April 7, 1983 through the pleading cycle in that decision. *See* 103 FCC 2d at 867 n. 4. The ALJ presiding over this case reported that, "since December 1983, the station has regularly broadcast 15-17 hours a day or 109 hours per week." *I.D.*, at para. 204 (citation omitted). *But see infra* notes 33 and 72.

[5] *I.D.* at para. 7 (quoting 60 RR 2d at 1076).

[6] *See* 60 RR 2d at 1075 n.8 (and cases cited therein).

[7] *I.D.* at para. 7 (quoting 60 RR 2d at 1076).

[8] Nor is a misrepresentation issue added by the ALJ against Straw based upon its representations concerning its transmitter site. I.D., para. 263. That issue also was resolved in Straw's favor, *id.*, para. 266, and no exceptions have been lodged against the ALJ's conclusion on that issue. Any such potential exceptions are likewise waived.

[9] The recently decided *KQED, Inc.*, 3 FCC Rcd 2821 (Rev. Bd. 1988) (applications for Comm'n review pending), did pit a noncommercial challenger against the incumbent noncommercial renewal applicant for Television Channel 32, San Francisco, California. However, in that case the incumbent licensee was disqualified on a misrepresentation issue, and there was no occasion to compare the competing applicants under the standard noncommercial comparative issue or to consider any renewal expectancy.

[10] *See also* Tr. of Oral Arg. of October 21, 1988 at 2735. However, Straw counsel qualified its acceptance of the renewal expectancy concept in this case by arguing that, if it is established that a share-time arrangement is warranted under 47 CFR §73.561(b), it is neither necessary nor proper to reach the

question of a renewal expectancy. Tr. at 2737-2738. We address this contention in our discussion of the time-share issue, *infra* para. 79.

[11] Straw Exceptions at 21, 25-26.

[12] *Id.*, at vi.

[13] *Id.*, at 26 (footnote omitted)(citing *I.D.*, paras. 24, 30).

[14] The italicized language was added by P.L. 97-35, August 13, 1981, 95 Stat. 357, 725. *See* Straw Exceptions at 21.

[15] Straw Exceptions at 21.

[16] SPS Reply at 21. *But cf. Multiple Ownership of Noncommercial Educational Radio and Television Stations*, 54 FCC 2d 941, 948 (1975)(Commission "would be concerned if a [noncommercial] station were used to simply mirror another station in a community). In context, however, it is apparent that the Commission was there discussing the problem of a single noncommercial licensee using several co-licensed freqencies for the identical programming, thus making inefficent use of the spectrum.

[17] *See* P.L. 90-129, November 7, 1967, 81 Stat. 365.

[18] *See Noncommercial Educational FM Broadcast Stations*, 69 FCC 2d 240, 241 (1978).

[19] *See Revision of FM Rules*, 21 RR 1655, 1657 (1961).

[20] Earlier in that same document, the Commission made plain that the essential statutory obligations of noncommercial broadcasters derive, as we suggested *supra*, para. 10, from Section 307 of the Communications Act. It repeated:

> The confines of the licensee's duty are set by the general standard "the public interest, convenience or necessity." The initial and principal execution of that standard, in terms of the area he is licensed to serve, is the obligation of the licensee. The principal ingredient of such obligation consists of a diligent, positive and continuing effort by the licensee to discover and fulfill the tastes, needs and desires of his service area. If he has accomplished this, he has met his public responsibility.

42 FCC 2d at 694 (quoting *En Banc Programming Inquiry*, 20 RR 1901, 1912 (1960)).

[21] *Sonnet 30*, l.1.

[22] *See also Deregulation Order*, *supra* para. 8. Because we are now reviewing the performance of KNHC-FM for the license period running from February 1, 1981 -January 31, 1984, we do not measure that station's performance by the deregulatory standards later adopted in June 1984. Our reference here is to that portion of the 1984 order detailing, yet again, the history of FCC regulation of noncommercial broadcasting and the wide latitude accorded on programming choices. *See id.*, at 750-752 (no changes in programming requirements which would impinge on First Amendment; Comm'n recognizes that "programming formats of these stations, as with many of their commercial counterparts, have become increasingly specialized, particularly in the case of radio).

[23] Straw Exceptions at 30 (citation omitted).

[24] BROADCASTING/CABLECASTING YEARBOOK, 1988 at B-301.

[25] In reviewing the Commission's decision in the comparative renewal case of *Simon Geller*, 90 FCC 2d 250, *recon. denied*, 91 FCC 2d 1253 (1982), the court noted that the incumbent licensee had broadcast virtually no issue-responsive programming keyed to ascertained community needs, but it seemed to brush incidentally against the licensee's entertainment format in the following passage:

> Focusing on the programming Geller proposed, the FCC concluded that Geller would not offer a new voice to the community because he offers "no voice at all." Therein must lie the conclusion that Geller's programming is of no value to the community, despite extensive testimony to the contrary. This type of *content evaluation* is exactly what we prohibited in *Central Florida I* [598 F.2d 37, 58-54 (D.C. Cir. 1978), *cert. dismissed*, 441 U.S. 957 (1979),] and *TV 9* [495 F.2d 929, 938 (D.C. Cir. 1973), *cert. denied*, 419 U.S. 986 (1974)].

Committee for Community Access v. FCC, 737 F.2d 74, 80 (D.C. Cir 1984)(emphasis added). In context, however, it is clear that the court's critique was directed to the Commission's consideration of the licensee's past programming under the *structural* comparative criterion of diversification of media control; and the court's language, we believe, was not intended to be a comment, favorable or unfavorable, on that licensee's entertainment format.

[26] Again, however, the Commission's *Multiple Ownership* document was discussing the situation in which an educational institution was licensed to operate more than one facility in a single community (educational licensees are exempt from the FCC's ordinary multiple ownership rules, *see* 54 FCC 2d at 942-943), and the referenced language expressed the agency's concern that none of the frequencies held by the same licensee become a "step-child," as in *KQED, Inc.*, *supra* note 9. *See also supra* note 16. Here, SPS holds only one broadcast license, KNHC-FM.

[27] SPS Reply at 21 (footnote omitted; emphasis added).

[28] *Tr. of Oral Arg.*, *supra* note 10, at 2798.

[29] Many schools, for example, operate carrier current radio stations under Section 15.7 of the Commission's rules, 47 CFR §15.7. *See New York University*, 19 FCC 2d 378, 425 (ALJ 1968); *see generally Carrier - Current Radio Systems*, 28 FCC 2d 357 (1971). In addition, the Instructional Television Fixed Service provides channels for "a wide-range of educational and instructional service to . . . student populations." *School District No. 1 - Denver, Colorado*, FCC 88-332, released November 1, 1988, at para. 11.

[30] SPS's use of KNHC-TV as a "vocational training" classroom is not to be confused with the use made of noncommercial stations by some educational licensees for "in-school instructional programming." As iterated in our text, a great many educational institutions, including state educational authorities, early-on acquired noncommercial broadcast stations to disseminate instructional programming to matriculating students and to members of the public who might audit such programming. The Commission's noncommercial broadcasting rules expressly recognize this "in-house" instructional function in 47 CFR §73.503(b), which reads:

> (b) Each station may transmit programs directed to specific schools in a system or systems for use in connection with the regular courses as well as routine and administrative material pertaining thereto and may transmit educational, cultural, and entertainment programs to the public.

The Commission has described such "instructional programming" as follows:

> "Instructional (I) includes all programs designed to be utilized by any level of educational institution in the regular instructional program of the institution. In-school, in-service for teachers, and college credit courses are examples of instructional programs.

Way of the Cross, supra, 101 FCC 2d at 1371-1372 n.5 (citation omitted). SPS did not use KNHC-FM for "instructional" purposes as defined above, but as a laboratory classroom. The Board recognizes that "nice" renewal expectancy questions might someday arise where a noncommercial licensee has utilized its facility almost exclusively for "in-school instructional purposes." While the Commission has significantly deregulated noncommercial broadcast stations and has eliminated formal ascertainment requirements for all such licensees, *Deregulation Order, supra* para. 8, the Commission did "retain the basic issue-oriented programming responsibility" on all noncommercial licensees. *Id.*, 98 FCC 2d at 752. Noncommercial licensees that utilize their stations primarily for "in-school instructional programming" should be reminded that the Commission, long ago, published its expectation that "a station occupying [such] a frequency would use it *to a reasonable degree* to provide a service to the public." *Noncommercial Educational FM Broadcast Stations, supra*, 69 FCC 2d at 254 (emphasis added).

[31] Straw Exceptions at 32.

[32] *Id.*

[33] SPS Reply at 21-22 (footnote omitted). At oral argument, SPS counsel advised that KNHC-FM is currently operating 24 hrs. per day. Tr. of Oral Arg. at 2813. We do not here consider such post-term performance and agree with Straw's Exceptions (at 38) that, insofar as the ALJ might have considered the station's post-term performance in awarding a renewal expectancy, this was error. Straw is correct that, in general, a licensee's post-term performance cannot be considered to upgrade license term performance. *See Alabama Educational Television Commission*, 50 FCC 2d 461, 475-476 (1975); *Trustees of the University of Pennsylvania*, 69 FCC 2d 1394, 1423-1424 (1978). In *United Broadcasting Company, Inc.*, 94 FCC 2d 938, 948-949 (Rev. Bd. 1983) (emphasis in original), the Board applied this principle in a comparative renewal case and held that "evidence accruing *after the filing of a competitive application* is *post litem motam* and thus entitled to reduced weight." Straw's competing application was here filed on January 3, 1984; evidence concerning SPS's performance after that date is entitled to scant recognition as regards past performance. However, the proposals of both applicants proffered under the standard noncommercial comparative issue are, necessarily, forward-looking, and we do take cognizance of those respective proposals in the comparative section of this decision.

[34] Mass Media Bureau Reply at 7.

[35] *Id.* As discussed *infra*, para. 81, we do not wholly agree with this latter contention.

[36] At some point, a severely truncated operating scheule could not but impact on the question of a licensee's overall service to its community.

[37] *See* Straw Exceptions at 1-2.

[38] In fact, to the extent that Straw complains that "SPS contracted away 28 hours a week of prime broadcast time" to SCCC, the Commission's policy statement in *Part - Time Programming*, 82 FCC 2d 107 (1980), also suggests that such arrangements are now perfectly acceptable for commercial broadcasters, and noncommercial stations as well. *See id.*, at 118-119.

[39] Substantial differences in hours of operation are also considered, on a comparative basis, in contests for new broadcast stations. *Minneapolis Star & Tribune Co.*, 88 FCC 2d 1604, 1612 (Rev. Bd. 1982)(and cases cited therein).

[40] In footnote 8 of the *I.D.*, the ALJ indicated that the programming exhibits entered by SPS contained showings of material broadcast "through August 1986, the end of the last complete school year before the [exhibit] exchange date in this case." For reasons discussed more fully *supra*, note 33, no programming evidence arising after the filing of Straw's competing application (January 3, 1984) should have been given any extended consideration. The Board's review of the SPS past programming record concentrates on the 3-year license period, February 1981 - February 1984, and we therefore give no decisional attention here to the evidence summarized in paragraphs 167-206 of the *I.D.*

[41] Paragraph 108 of the *I.D.* samples such organizations:

> Alcoholics Anonymous, American Cancer Society, American Heart Association, American Red Cross, CARE, King County (Seattle) Extension Services, King County (Seattle) Library System, Parent Teacher Student Association, Puget Sound League of Women Voters, Seattle Aquarium, Seattle Area Association of Black Accountants, Seattle Central Community College, Seattle Children's Theater, Seattle City Attorney, Seattle Commuter Pool, Seattle Consumer Action/Protection Network, Seattle Parks Department, Tacoma Youth Symphony, UNICEF, United Way, Washington Lung Association, Washington State Art Commission, and West Seattle Mental Health Center.

[42] Straw Exceptions at 26.

[43] *Id.* (emphasis added). This seems not to be so much a criticism of SPS's ascertainment efforts, but a defense of its own which the ALJ found deficient in his comparative analysis, *see I.D.* paras. 312-316, a matter we discuss *infra*. at paras. 67-68.

[44] Straw Exceptions at 33.

[45] *Id.*, at 27.

[46] As noted earlier *(supra* note 22), it was not until 1984 that the Commission completely eliminated its formal ascertainment requirement for noncommercial broadcasters.

[47] Straw Exceptions at 33.

[48] *Id.*, at 33-34 n.52.

[49] *King John*, act II, sc. 1, l. 466.

[50] Straw Exceptions at 27 (quoting 1976 *Ascertainment policy).*

[51] Straw Exceptions at 33 (citation and footnote omitted).

[52] Tr. of Oral Arg. at 2818-2819.

[53] So much so does the Commission regard regulatory compliance as a useful indicator of licensee performance, that it is currently mulling over a potential policy change whereby it would no longer consider at all a licensee's program performance, but would base any renewal expectancy entirely on "a licensee's *overall* record of compliance with the Communications Act and the Commission's rules and policies." *See Formulation of Policies And Rules Relating to Broadcast Renewal Applicants*, 3 FCC Rcd 5179, 5195-5196 (1988). It has also suggested that parties to ongoing comparative hearings might motion to apply its proposed renewal standards in any ongoing

renewal case, *see id.*, at 5197. We have received no such motion here, and do not apply any potential renewal policies proposed in this recent notice.

[54] We would also consider violations of any other laws or predictive character flaws, in consonance with the Commission's *Character Policy Statement*, 102 FCC 2d 1179 (1986).

[55] *See, e.g., Tele-Broadcasters of California, supra*, 58 RR 2d at 226-227 & n.11; *Pillar of Fire, supra*, 99 FCC 2d at 1261-1263 & n.16; *Intercontinental Radio*, 98 FCC 2d at 619, 620, 622-623, 625, 629-630, 635-636 & n.77, 643 & n.114.

[56] Indeed, inasmuch as the Commission has abrogated its program percentage guidelines, *Deregulation of Radio*, 84 FCC 2d 968, 975-983 (1981)(subsequent history omitted), and renewal applicants now merely file postcards without a proposed programming breakdown, *Revision of Applications for Renewal of License of Commercial and Noncommercial AM, FM, and Television Licensees*, 49RR 2d 740 (1981), *recon. denied*, 87 FCC 2d 1127 (1981), *aff'd sub nom. Black Citizens for a Fair Media v. FCC*, 719 F.2d 407 (D.C. Cir. 1983), *cert. denied*, 467 U.S. 1255 (1984), two of the key quantitative profiles we have consulted in prior comparative renewal cases will be difficult, if not impossible, to examine.

[57] In the atmospheric sense - of course.

[58] Straw Exceptions at 27-29.

[59] *Id.*, at 28-29.

[60] SPS Reply at 17 (footnote omitted).

[61] The court is familiar with the interplay between an incumbent licensee's past broadcast record and the standard comparative criteria applied in commercial contests. *See, e.g., Committee for Community Access, supra.*

[62] *Eligibility for Noncommercial FM and TV Broadcast Station Licenses*, 43 Fed. Reg. 30842, July 18, 1978 *(Notice of Proposed Rulemaking)*. *See also Way of the Cross, supra*, applying these eligibility standards.

[63] Straw Exceptions at 24.

[64] SPS Reply at 13-14 (footnote omitted).

[65] Straw Exceptions at 45.

[66] Again, Shakespeare, *A Midsummer-Night's Dream*, act V, sc. i, l. 272.

[67] As did the ALJ, *see I.D.*, para. 305.

[68] Straw Exceptions at 26.

[69] *Id.*, at 27.

[70] In light of the Commission's 1984 *Deregulation Order*, and particularly that portion eliminating the need for formal ascertainment, *see* 98 FCC 2d at 752-754, we regenerate our suggestion that the Commission revisit the noncommercial comparative issue with an eye towards reconciliation. In this case, we are operating under the 1976 noncommercial *Ascertainment* regime; in any future cases, the *Deregulation Order* language could create even further confusion as to the current intent of the second prong of the noncommercial comparative issue.

[71] This testimony is supported by the station's logs. SPS Exh. 1, Attachment D, at 37-38.

[72] As discussed at note 33, *supra*, SPS counsel represented that KNHC-FM has been most recently operating 24 hours per day, but SPS made no such proposal with its application, and this later figure will not be counted for comparative or time-share purposes.

[73] Straw will provide a first noncommercial educational service to 11,778 persons and a second such service to 81,314 persons whereas the School System will provide no first service and a second service to 15,378 persons. Overall, Straw will serve a population of 1,878,765 as compared to 1,261,824 by the SPS. *I.D.*, paras. 223-224.

[74] Straw Exceptions at 18; *see id.*, at 13-20.

[75] At the very most, we believe that Straw would be entitled to the type of "conditional" coverage preference we have sanctioned in the recent cases of *Newton Television Ltd.*, 3 FCC Rcd 553 (Rev. Bd. 1988), and *Kennebec Valley Television, Inc.*, 2 FCC Rcd 1240 (Rev. Bd. 1987), *rev. granted in part and denied in part*, 3 FCC Rcd 4522 (1988). In both, the Board awarded coverage preferences, subject to the potential consent of unrelated government agencies that had not yet approved of the applicants' respective technical proposals. While we have awarded "conditional" comparative coverage preferences in contests for new broadcast stations, where the risks of a failure of the condition subsequent are delay and a possible vacation of our Construction Permit award, *see Newton Television*, at 557, the risks to the public and burden on an otherwise satisfactory incumbent licensee, based on a "conditional" comparative coverage preference to its challenger, are manifest. Only in highly unusual situations should a "conditional" comparative coverage preference be contemplated in a comparative renewal setting.

[76] Straw Exceptions at 39.

[77] *Id.*, at 40.

[78] *Id.*, at 41.

[79] *Id.*, at 41-42. It is represented, however, that three of Straw's time-share options were not proffered to the ALJ. SPS Reply at 24.

[80] SPS Reply at 23 (quoting *Memorandum Opinion and Order, supra* para. 4, 60 RR 2d at 1075).

[81] Straw Exceptions at vi.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-568

In re Applications of

MARY KAREN DODD (hereafter: Dodd) File No. BPH-871119MG

EDUCATIONAL BROADCASTING CORP. (hereafter: EBC) File No. BPED-871216MB

PAMELA KAY WARREN (hereafter: Warren) File No. BPH-871216MH

FRED M. WEINBERG (hereafter: Weinberg) File No. BPH-871216MJ

For Construction Permit for a New FM Station on Channel 264A in Claremore, Oklahoma

HEARING DESIGNATION ORDER

Adopted: November 30, 1988; Released: January 17, 1989

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Preliminary Matter.* In the *Report and Order* in MM Docket No. 85-156, released September 30, 1987, 2 FCC Rcd 5921 (1987), the Commission, *inter alia*, amended the FM Table of Allotments to allot Channel 233A to Claremore, Oklahoma and Channel 264A to Locust Grove, Oklahoma. William R. Williams, Trustee in Bankruptcy, licensee of FM Station KNFB, Channel 232A, Nowata, Oklahoma, and Moran Broadcasting Company, proposed assignee of Station KNFB (Williams and Moran), filed a Petition for Reconsideration directed against the allotment of Channel 233A to Claremore. On February 16, 1988, Williams and Moran filed a Request to Stay Processing of the Claremore and Locust Grove, Oklahoma, MX groups pending a final determination in MM Docket No. 85-156. On February 23, 1988, Fred Weinberg, an applicant in the above-captioned Claremore proceeding, filed an Opposition to Request to Stay Proceedings. On June 29, 1988, the Commission released its *Memorandum Opinion and Order* in MM Docket No. 85-156, 3 FCC Rcd 4037 (1988), in which it reversed its previous action and amended the Table of Allotments to allot Channel 233A to Locust Grove and Channel 264A to Claremore. At the time this latter amendment of the Table of Allotments was taken, the four applications for Claremore were pending for the Channel 233A allotment. As a result of the Commission's action, all four applicants, each of which had proposed the same transmitter site, ERP and HAAT, became short-spaced to existing Station KXOJ(FM), Sapulpa, Oklahoma, by 14.9 km and to existing Station KBBQ(FM), Fort Smith, Arkansas, by 8 km. Accordingly, each applicant will be permitted, within 30 days of the release of this Order, to submit an amendment to the presiding Administrative Law Judge, to specify the new channel and a new transmitter site.[1] Also as a result of the Commission's action upon reconsideration, the Request to Stay Processing and the Opposition to Request to Stay Proceeding became moot. Accordingly, they will be dismissed herein.

3. *Divestiture.* Pamela Kay Warren is station manager and her husband Mike Warren is general manager of KOAW(AM), Ruidoso, New Mexico. They have indicated their intent to terminate their relationships with KOAW(AM) in the event of grant of the referenced application. Accordingly, in the event of grant of Warren's application, Pamela Kay and Mike Warren will be required to sever all connections with KOAW(AM) prior to the commencement of program test authority.

4. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

6. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Dodd, EBC, Warren and Weinberg shall submit an amendment specifying the information requested in Paragraph 2 herein.

7. IT IS FURTHER ORDERED, That the February 16, 1988, Request to Stay Processing and the February 23, 1988, Opposition to Request to Stay Proceeding ARE DISMISSED as moot.

8. IT IS FURTHER ORDERED, That, in the event of grant of Warren's application, Pamela Kay and Mike Warren will be ordered to divest themselves of all interests in and sever all connections with station KOAW(AM) prior to the commencement of program test authority.

9. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

10. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by

attorney, within 20 days of the mailing of this Order, not later than, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

[1] *See Memorandum Opinion and Order* in MM Docket No. 85-156, 3 FCC Rcd 4037, 4039 n.2 (1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-559

In re Applications of

A.P. WALTER, JR. (hereafter Walter)	File No. BPH-870824MS
LADIES III BROADCASTING, INC. (hereafter Ladies)	File No. BPH-870824MV
VOICE OF THE GULF LIMITED PARTNERSHIP (hereafter Voice)	File No. BPH-870824MU
Richard J. Bellairs and Vivian L. Bellairs d/b/a BEACH BROADCASTING (hereafter Beach)	File No. BPH-870824MF
SHELL ISLAND BROADCAST ASSOCIATES (hereafter Shell)	File No. BPH-870821MC (PREVIOUSLY DISMISSED)
C. C. BROADCASTING LTD. (hereafter CCB)	File No. BPH-870824MW (DISMISSED HEREIN)

For Construction Permit for a New FM Station on Channel 286C2 (105.1 MHz) in Panama City, Florida

HEARING DESIGNATION ORDER

Adopted: December 2, 1988; Released: January 17, 1989

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Preliminary Matters*. Shell Island Broadcast Associates (Shell) filed an application on August 21, 1987. (File No. BPH-890821MC) [1] That application specified a transmitter site separated from a vacant first adjacent FM channel in Chattahouchee, Florida, by 104.2 kilometers instead of the 105 kilometers as provided in Section 73.207 of the Commission's Rules. Accompanying the application was a request to waive the 0.8 kilometer short-spacing. On March 14, 1988, Shell's application was returned as unacceptable for filing and its waiver request denied by letter from the Chief, FM Branch. Shell was informed that inasmuch as its waiver request was supported merely by a recitation of the *de minimis* extent of the short-spacing, there was insufficient justification for a waiver. The denial letter referenced Commission policy of not waiving the minimum distance separation standards unless no fully-spaced or lesser-spaced sites exist, citing, among other authority, *Donovan Burke*, 104 FCC 2d 843 (1986). The letter noted, in this regard, that other applicants had specified fully-spaced sites and that no issue had been raised as to their availability or feasibility. On April 21, 1988, Shell submitted a petition for reconsideration of the action denying its waiver request and returning its application.[2] On May 17, 1988, it submitted a supplement to its petition as well as a petition for leave to file.

3. In its petition, Shell argued that the short-spacing involved, 0.8 km, is *de minimis* under *Kenter v. FCC*, 62 RR 2d 1573, 1577 n.9 (1986), *aff'd per curiam*, 816 F.2d 8 (D.C. Cir. 1987), and that under *Kenter*, a threshold showing that fully spaced or lesser short-spaced sites are unavailable is required to support waiver requests only for short-spacings that are not *de minimis*. [3] Shell contended that the staff erroneously determined that its waiver request was insufficient by ignoring this distinction, and requests reinstatement of its application on a *nunc pro tunc* basis.

4. Shell's reliance on *Kenter*, *supra*, is misplaced. In *Kenter*, the Commission reiterated its intent that the " *de minimis* " exception "describe[s] only those cases where we may grant a short-spacing waiver even though the applicant failed to make a threshold showing of no fully spaced site, *provided the applicant has demonstrated that the public interest will be served* despite the minor deviation from our spacing rule." 62 RR 2d 1577, at n.9. (Emphasis added). As noted above, Shell, in its original application, offered no justification as to why its waiver request was consistent with the public interest, but merely recited that "short spacing would occur between the proposed facility and an allocation to Chattahouchee, Florida." *Cf. Twin City Broadcasting, Inc.*, 2 FCC Rcd 7039, 7040 (1987)(HDO). Lacking adequate waiver justification, Shell's application was thus unacceptable for filing. Consequently, Shell has failed to demonstrate under 47 C.F.R. § 1.106 that the staff erred in returning its application, and its petition for reconsideration must therefore be denied.

5. *CCB*. In its application, CCB requested waiver of 47 C.F.R. § 73.207 concerning the non *de minimis* 4.19 km short-spacing of its proposed site to the existing facilities of WAAZ-FM, Channel 285A, Crestview, Florida. CCB asserted that the licensee of WAAZ-FM is prosecuting a notice of proposed Rule Making to upgrade its facilities from Channel 285A to 284C2 which, if granted, would eliminate any short-spacing to CCB's proposed site. *See* MM Docket No. 86-455; RM-5088 and RM-5337. CCB further argued that its choice of a suitable site in the community of license, Panama City, Florida, was "severely restricted" at the time of filing due to "a large portion of the fully spaced area [being] located on a top-secret government facility east of Panama City Beach. The remainder of the area is located in an exclusive, beach front, residential area, and on a golf course, where land of suitable size in not available."

6. On April 14, 1988, Ladies III timely filed a petition to dismiss or deny CCB's application as unacceptable for filing, correctly citing *Donovan Burke*, 104 FCC 2d 843, 844 (1986), for the proposition that it is contrary to

Commission policy to waive FM spacing rules where, as here, mutually exclusive applicants have specified fully spaced sites and no question has been raised regarding the technical feasibility or availability of those sites. CCB argued in opposition that in the present case no short-spacing will occur since "it is all but certain that Station WAAZ-FM will be operating on its new frequency long before commencement of operations by [CCB]." The cases on which CCB relies, however, are distinguishable. In *George Henry Clay*, 3 FCC Rcd 41, 42 (1988)(HDO) and *Orlando FM Group Limited Partnership*, 2 FCC Rcd 4691, 4693 (1987)(HDO), unlike the present case, waiver of 47 C.F.R. § 73.207 was found unnecessary because the staff was able to conclude affirmatively that short spacing would not occur.[4] In contrast, granting CCB's waiver request would require us to accept an application contingent upon a proposed Rule Making seeking modification of an otherwise short-spaced existing facility -- WAAZ-FM on Channel 285A -- thus violating 47 C.F.R. § 73.3517 and conflicting with the policy established in *North Texas Media, Inc., supra*. *See also Ying Hua Benns*, 3 FCC Rcd 2143 (1988)(HDO). In light of the foregoing, CCB's request for waiver of 47 C.F.R. § 73.207 must be denied, and its application returned as inadvertently accepted for filing. Accordingly, to the extent indicated herein, Ladies III's petition to dismiss CCB's application will be granted.

7. *Voice*. Voice's application consistently proposes construction of a 512 foot (156 meter) tower to support its antenna. However, the Commission's Antenna Survey Branch has indicated that, at the proposed coordinates, clearance has only been received for a tower 500 feet (152.4 meters) above ground level. This discrepancy does not affect the acceptability of the application, since the values specified therein are consistent and do not cause the application to violate any technical acceptance rule. However, Voice will be required to submit a clarifying amendment to resolve this discrepancy. In addition, an air hazard issue will be specified.

8. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last date for filing minor amendments as of right. Under 47 C.F.R. § 1.65, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Ladies III	April 22, 1988
Voice	June 2, 1988

9. Data submitted by the applicants indicate there would be significant differences in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

10. Attempts to obtain Federal Aviation Administration (FAA) clearance through the Commission's Antenna Survey Branch and from the following applicant has been unsuccessful. Accordingly, since no determination has been received that the tower proposed by the applicant below would not constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA will be made a party to the proceeding.

APPLICANTS: Beach.

11. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, IT IS ORDERED, That, pursuant to 47 U.S.C. § 309(e), the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower heights and locations proposed by the following applicants would constitute a hazard to air navigation: Voice; Beach.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

13. IT IS FURTHER ORDERED, That, for the reasons set forth in paragraphs 3-4 hereinabove, the petition for reconsideration filed by Shell IS DENIED.

14. IT IS FURTHER ORDERED That, for the reasons set forth in paragraphs 5-6 hereinabove, the petition to deny filed by Ladies III IS GRANTED, and the application filed by CCB IS HEREBY RETURNED.

15. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by the following applicants ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein: Ladies III; Voice.

16. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

17. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

18. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to 47 C.F.R. § 1.221(c), in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

19. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to 47 U.S.C. § 311(a)(2) and 47 C.F.R. § 73.3594, give notice of the hearing within the

time and in the manner therein prescribed and shall advise the Commission of the publication of such notice as required by 47 C.F.R. § 73.3594(g).

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTES

[1] Shell filed a minor amendment to its application on November 13, 1987.

[2] In order to better utilize the Bureau's limited processing staff resources, the Commission has approved staff consideration and disposition of tenderability and acceptability matters in the context of the relevant hearing designation orders rather than in a separate action documents. *Teton Broadcasting*, 1 FCC Rcd 518 (1986). *See also* 47 C.F.R. 1.106(a)(1).

[3] With respect to its assertion that the fully spaced sites specified by competing applicants were technically unfeasible, Shell has ignored that the burden of demonstrating such facts rests with the party seeking waiver, at the time the request is made. *See North Texas Media, Inc.* v. FCC, 778 F.2d 28, 34 (D.C. Cir. 1985).

[4] In *Clay*, several applicants were short-spaced to the licensed facilities of WBIL-FM, Tuskegee, Alabama, but their requests for waiver of the minimum spacing requirements were dismissed as moot because the short-spaced station was operating at its new site in Montgomery, Alabama, *prior* to the opening of the Montgomery filing window. Similarly, a short-spacing waiver was unnecessary in *Orlando*, where 33 of the 48 applicants filed short-spaced to the 16 km buffer zone afforded WKTK-FM, Crystal River, Florida, because that station was operating at a new site, having abandoned its buffer zone protection at a time prior to the opening of the filing window for Orlando. *See also Henry R. Malloy, Jr. d/b/a Rem Malloy Broadcasting*, 3 Fcc Rcd _____ (1988) (HDO).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-580

In re Applications of

BOYCE DOOLEY File No. BPH-871021MA
(hereafter Dooley)

SAFE BROADCASTING CORPORATION File No. BPH-871022MC
(hereafter Safe)

TRI-STATE BROADCASTING COMPANY File No. BPH-871023MJ
(hereafter Tri-State)

LYNN S. GWYN File No. BPH-871023MM
(hereafter Gwyn)

KAY W. ABBOTT AND JOHN W. ABBOTT D/B/A FAITH BROADCASTING File No. BPH-871023MR
(hereafter Faith)

For Construction Permit
for a New FM Station on
Channel 239A, Trion, Georgia

HEARING DESIGNATION ORDER

Adopted: December 9, 1988; Released: January 17, 1989

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.[1]

2. *Preliminary Matters.* Safe is the licensee of WSAF(AM), Trion, Georgia which operates as a daytime-only AM station. Safe has indicated that it and the officers, directors and shareholders of Safe, Terry R. Adams and Tony Wilkie, will divest themselves of any and all interest in and connection with WSAF(AM) in the event that Safe's application for the instant allocation is granted. Accordingly, an appropriate divestiture condition will be specified below.

3. Tri-State is the licensee of WGTA(AM), Summerville, Georgia. Tri-State has indicated that it and its principals, William B. Farrar, Charles C. Farrar, and Carolyn K. Farrar, will divest themselves of all interest in WGTA(AM) in the event that Tri-State's application for the instant allocation is granted. Accordingly, an appropriate divestiture condition will be specified below.

4. Section II, Item 4 of FCC Form 301 (October 1986) requires that an corporate applicant list its officers, directors and stockholders. Tri-State fails to list its directors in Item 4, Section II. Consequently, Tri-State will be required to amend its application by disclosing its directors and, if its directors are not the same parties as its officers and stockholders, by providing the citizenship and media interests of these directors in accordance with Section II, Items 2,7,8.

5. Lynn S. Gwyn, the individual applicant for the instant allocation, and her husband, Charles Rich Gwyn, are the principals of Radix Broadcasting, Inc., proposed assignee of WLFA(AM) LaFayette, Georgia. WLFA(AM)'s call sign was changed to WQCH(AM) on May 1, 1988 and the assignment (BAL-880324EB) was approved on May 5, 1988. Gwyn has disclosed that she and her husband are presently the operations manager and general manager, respectively, of WQCH(AM). The Gwyns have indicated that they will divest themselves of their interests in WQCH(AM) in the event that Lynn S. Gwyn's application for new FM service in Trion, Georgia is granted as the result of a final comparative decision of the Commission. This divestiture pledge is deficient, since it is contingent on grant of the instant application pursuant to a decision following a comparative hearing. Gwyn's conditional divestiture pledge does not insure compliance with the Commission's cross-interest policy because there is no promise to divest in the event of grant pursuant to a means other than a hearing, *i.e.*, grant pursuant to a settlement agreement executed by mutually exclusive applicants. *See Reexamination of the Commission's Cross - Interest Policy*, 2 FCC Rcd 3699 (1981). Accordingly, an appropriate cross interest issue will be specified.

6. In response to Section VI, FCC Form 301, the applicant below has indicated that it will employ five or more full-time employees. Pursuant to 47 C.F.R. § 73.2080(c), each applicant is required to submit an Equal Employment Opportunity (EEO) Program in compliance with the provisions of the rules as set forth in FCC Form 396A, the 5-point model EEO Program. The EEO program submitted by the following applicant is incomplete or is otherwise deficient in the manner described. Accordingly, the listed applicant will be required to file an amended EEO Program with the presiding Administrative Law Judge within 30 days of the release of this Order.

APPLICANT	DEFICIENCY
Tri-State	Failed to identify specific publications which will be utilized to attract women and minority candidates.

7. Gwyn petitioned to amend her application on April 25, 1988. The accompanying amendment was filed after April 7, 1988, the last date for filing minor amendments as of right. Under 47 C.F.R. § 1.65, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

8. Section II, Item 4 of FCC Form 301 (October 1986) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. Gwyn has not completed Item 4 correctly. Gwyn's application gives a post office box number as the residence address for Lynn S. Gwyn. Accordingly, Gwyn must submit an amendment which gives all the informa-

tion required by Section II, Item 4 to the presiding Administrative Law Judge within 30 days of the release of this Order.

9. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

10. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

11. Accordingly, IT IS ORDERED, That, pursuant to 47 U.S.C. § 309(e), the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Gwyn, whether the involvement of Lynn S. Gwyn and her husband Charles Rich Gwyn with Station WQCH(AM) is consistent with the Commission's cross-interest policy and, if not, whether a grant of the application would be in the public interest.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

12. IT IS FURTHER ORDERED, That in the event of grant of Safe's application, the construction permit shall be conditioned as follows:

Prior to the commencement of operation of the station authorized herein pursuant to program test authority, the permittee shall certify to the Commission that it, its principals and stockholders, Terry R. Adams and Tony Wilkie, have divested themselves of all interests in and severed all connections with Station WSAF(AM), Trion, Georgia.

13. IT IS FURTHER ORDERED, That, in the event of grant of Tri-State's application, the construction permit shall be conditioned as follows:

Prior to the commencement of operation of the station authorized herein pursuant to program test authority, the permittee shall certify to the Commission that it and its principals, William B. Farrar, Charles C. Farrar and Carolyn K. Farrar, have divested themselves of all interests in and severed all connections with Station WGTA(AM), Summerville, Georgia.

14. IT IS FURTHER ORDERED, That Tri-State submit an amendment in accordance with paragraph 4 hereinabove to the presiding Administrative Law Judge within 30 days of the release of this Order.

15. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Tri-State shall submit Section VI information in accordance with the requirement of 47 C.F.R. § 73.2080(c) to the presiding Administrative Law Judge.

16. IT IS FURTHER ORDERED, That the petition for leave to amend filed by Gwyn IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

17. IT IS FURTHER ORDERED, That Gwyn shall submit an amendment which contains the information required by Section II, Item 4 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

18. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

19. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to 47 C.F.R. § 1.221(c), in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

20. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to 47 U.S.C. § 311(a)(2) and 47 C.F.R. § 73.3594, give notice of the hearing within the time and in the manner therein prescribed, and shall advise the Commission of the publication of such notice as required by 47 C.F.R. § 73.3594(g).

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

[1] Faith's application, filed on October 23, 1987 (BPH-871023MR), was returned by the Commission's Fee Section. On November 27, 1987, Faith petitioned the Chief, Fee Section for reconsideration of this action. Faith also resubmitted its application with this petition, and this application was assigned the file number BPH-871123ME. The refiled application was returned by staff letter of December 9, 1987, as insufficient for tender, referencing tenderability defect code W, because the refiled application was filed after the window for the allotment was closed. On January 13, 1988, Faith filed a supplement to its petition for reconsideration, protesting the return of its refiled application. On February 23, 1988, The Managing Director

granted Faith's petition for reconsideration and reinstated its application *nunc pro* tunc. Therefore, Faith's application retains its original file number, BPH-871023MR.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-569

In re Applications of

WILLIAM L. KNOWLES (hereafter Knowles) File No. BPH-851114MS

MOUNTAIN RIVER BROADCASTING, INC. (hereafter Mountain) File No. BPH-851115NT

Construction Permit for
a New FM Station on Channel 243A
in Yellowstone, Montana

HEARING DESIGNATION ORDER

Adopted: December 9, 1988; Released: January 17, 1989

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Mountain proposes to mount its antenna on the existing tower of station KWYS(AM). Our study indicates that the operation of the new proposal and the existing KWYS(AM) facilities may significantly exceed the radio frequency (RF) radiation guidelines under 47 C.F.R. § 1.1307(b). Accordingly, Mountain is required to amend its application within 30 days of the release of this Order to demonstrate compliance with the RF radiation guidelines. The applicant must submit a detailed study based upon OST Bulletin No. 65 (October, 1985) entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Radiation." This study must include the cumulative effect of the proposed operation and the KWYS(AM) operation. If a fence is to be built, the applicant must give the distance from the base of the tower to the fence. Since the proposal of Mountain may have a significant environmental impact as defined by 47 C.F.R. § 1.1307, Mountain is required to submit the environmental impact information described in 47 C.F.R. § 1.1311. Accordingly, Mountain will be required to file within 30 days of the release of this Order an environmental assessment with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1.308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting*, 71 FCC 2d 229 (1979), *recon.* denied sub nom. *Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

3. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

4. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Mountain in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

6. IT IS FURTHER ORDERED, That in accordance with paragraph 2 hereinabove, Mountain shall submit the environmental assessment required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

7. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

8. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

9. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

GEN. Docket No. 87-387

In the Matter of

The Freedom of Information
Reform Act of 1986;
Fee Schedule and Administrative
Procedures

ERRATUM

Released: January 17, 1989

On August 23, 1988, the Commission released a Report and Order, FCC 88-259, concerning the above-captioned proceeding, 3 FCC Rcd 5107 (1988). The following corrections are made to the Report and Order. The item, as published in the Federal Register, 53 Fed. Reg. 39,092 (October 5, 1988) and the rules as they appear in the current Code of Federal Regulations (CFR) contain these corrections and are therefore accurate.

1) In paragraph 28 an additional footnote 7 is added as follows:

> The Administrative Procedure Act requires that the publication of a rule shall be made not less than 30 days before its effective date, except as otherwise provided by the agency for good cause. 5 U.S.C. § 553(d)(3). The *Reform Act* required agencies to promulgate rules implementing its provisions by April 25, 1987. Accordingly, the Commission finds that good cause exists to dispense with the 30 day prior notice provisions of the APA. In addition, the Commission publicly released the text of the rules, specifying an effective date of September 29, 1988. Therefore, the public, in fact, received 30 days advance notice of the rules prior to their effective date.

2) The first sentence of Paragraph 5 of Appendix A of the Report and Order, which reads, "[s]ection 0.466 is proposed to be revised and read as follows," is removed and replaced with the following language:

> **§ 0.467 [Removed]**
>
> 5. Section 0.467 is removed and section 0.466 is redesignated as new 0.467, and is amended by revising paragraph (a) through (e) and by removing existing paragraphs (h) and (j) and by redesignating paragraph (j) to become paragraph (h). A new section 0.466 is added to read as follows.

3) Paragraph 6 of Appendix A of the Report and Order has been removed.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Editorial amendment of list of Office of Management and Budget approved information collection requirements contained in Part 0 of the Commission's Rules

ORDER

Adopted: January 4, 1989; Released: January 17, 1989

1. Section 3507(f) of the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3507(f), requires agencies to display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement.

2. Section 0.408 of the Commission's Rules displays the OMB control numbers assigned to the Commission's information collection requirements. OMB control numbers assigned to Commission forms are not listed in this section since those numbers appear on the forms.

3. This Order amends Section 0.408 to remove listings of information collections which the Commission has eliminated or to add listings of new information collections which OMB has approved.

4. Authority for this action is contained in Section 4(i) of the Communications Act of 1934 (47 U.S.C. 154(i)), as amended, and Section 0.231(d) of the Commission's Rules. Since this amendment is editorial in nature, the public notice, procedure, and effective date provisions of 5 U.S.C. 553 do not apply.

5. Accordingly, IT IS ORDERED, THAT Section 0.408 of the rules is AMENDED in accordance with the attached appendix, effective on the date of publication in the Federal Register.

6. Persons having questions on this matter should contact Jerry Cowden at (202) 632-7513.

FEDERAL COMMUNICATIONS COMMISSION

Edward J. Minkel
Managing Director

APPENDIX

Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 0 - Commission Organization

1. The authority citation for Part 0 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. In 47 CFR 0.408, paragraph (b) is amended by removing footnote 2 and the following rule sections and their corresponding OMB control numbers:

Rule section no.	OMB control no.	Rule section no.	OMB control no.
87.35(e)	3060-0197	90.356	3060-0237
87.95	3060-0192	90.382	3060-0238
87.127	3060-0201	94.27(b)	3060-0312
87.153	3060-0202		

3. In 47 CFR 0.408, paragraph (b) is amended by adding the following rule sections and their corresponding OMB control numbers:

Rule section no.	OMB control no.	Rule section no.	OMB control no.
1.720 - 1.734	3060-0411	80.227	3060-0388
76.33	3060-0416	87.31	3060-0197
76.94	3060-0419	87.37	3060-0202
76.155	3060-0419	87.103	3060-0192
76.157	3060-0419	94.27(a)(6)	3060-0312
76.159	3060-0419		

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-1
Phase II

In the Matter of

Annual 1988 Access Tariff Filings

Motions To Extend Time

Pacific Bell Motion for Stay

ORDER

Adopted: January 6, 1989; Released: January 6, 1989

By the Chief, Common Carrier Bureau:

1. The BellSouth Companies (BellSouth); the Ameritech Operating Companies (Ameritech); the Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (US West); New England Telephone and Telegraph Company and New York Telephone Company (NYNEX); Cincinnati Bell Telephone Company (Cincinnati Bell); and Pacific Bell have filed motions for extension of time in the above-referenced matter.[1] Pacific Bell has also filed a motion for stay. The Ad Hoc Telecommunications Users Committee (Ad Hoc) has filed an opposition to the motions for extension of time.[2] By this Order, we grant the motions filed by BellSouth, US West, and NYNEX, and deny those filed by Pacific Bell, Ameritech, and Cincinnati Bell.

2. In its *December 27 Order*,[3] the Commission concluded that certain local exchange companies (LECs) had overstated revenue requirements in their annual 1988 access tariff filings. Accordingly, the *December 27 Order* required those LECs to file no later than January 6, 1989, one of the following: (1) tariff revisions effecting the disallowances for the remainder of the 1988 access year; (2) a plan for refunding the disallowed amounts; or (3) a letter of intention to adjust the revenue requirement in the carrier's Annual 1989 Access Tariff Filing to reflect the disallowances. If a carrier chooses the third option, the *December 27 Order* requires the carrier to file revisions to its 1989 access filing by January 13, 1989.

3. In its motion for extension of time, BellSouth states its intention to elect the third option and asks that the Commission extend the time for filing the tariff revisions from Janaury 13 until January 30. BellSouth argues that it needs additional time to fully analyze the *December 27 Order*, to determine the appropriate manner by which to reflect the disallowances for the Annual 1989 Access Tariff period, and to prepare the required tariff filing. BellSouth also states that it will file a letter of intent on January 6. US West states that it will effect any necessary disallowances through use of refunds, but asks that the Commission extend the date for submission of a detailed refund plan from January 6, 1989, until February 3, 1989. NYNEX states that it will use either the second or the third option, but that it needs additional time to analyze the disallowances. It contends that no party's interest would be harmed if the Commission extended until January 24, 1989, the date by which it must file a refund plan or file adjustments to its 1989 revenue requirement.

4. Ameritech and Cincinnati have filed extension requests that are similar to each other, in which they argue that the January 6 date should be extended. Their motions differ significantly from those summarized in the preceding paragraph in that neither carrier commits to any of the options set forth in the *December 27 Order*. Cincinnati requests an extension to January 26; Ameritech requests an extension to January 27, without prejudice to its right to seek appropriate regulatory or judicial relief.

5. Pacific Bell requests an extension of time pending Commission consideration of Pacific Bell's motion for stay.[4] In its motion for stay, Pacific Bell requests a stay of the January 6 filing requirement, pending Commission consideration of a petition for reconsideration which Pacific Bell intends to file. Pacific Bell states that it is likely to prevail on the merits, that it will suffer irreparable harm if the stay is not granted, that granting the stay will not harm any interested party, and that grant of a stay is in the public interest.

6. Ad Hoc argues in its opposition that any extension of the date to file tariff revisions to effect the ordered disallowances will obviate the possibility of comment on such revisions. Ad Hoc maintains that the comment date for the annual 1989 access tariffs filed on December 30 applies to any revisions as well, so that tariff revisions filed later than January 24 would not be subject to comment.

7. We have reviewed the motions to extend time, and have concluded that good cause has been shown for an extension of certain of the deadlines established in the *December 27 Order*. One major concern prompting the Commission to establish the schedule set forth in the *December 27 Order* is the short period remaining in the 1988 access year. If a LEC opts to effect the disallowances by revising its 1988 access tariffs, such revisions must take effect on an expedited basis before the end of the access year. Thus, those motions seeking a blanket extension of the January 6 deadline, including the deadline for filing revisions to 1988 tariffs, cannot be granted.[5]

8. We are persuaded, however, that the public interest would be served if carriers that have chosen the other options are given additional time to calculate and develop refund plans and 1989 revenue requirement adjustments. Accordingly, we are granting the motions of BellSouth, US West and NYNEX for an extension of the dates for filing refund plans (previously January 6) and 1989 tariff revisions (previously January 13). We have concluded that an extension of these filing dates is warranted, will not harm any party,[6] and will serve the public interest. We have determined that the new date should coincide with the general errata filing for the annual 1989 access tariffs. Accordingly, BellSouth, NYNEX, US West, and carriers described in note 7, *supra*, must respond to the requirements of our *December 27 Order* by filing either a refund plan or an application for special permission with proposed revisions to their 1989 Access tariff filing and related cost support on the date established for general errata filings. This application for special permission must include all errata, as well as the response to the *December*

27 Order. Details of this errata filing, including establishment of the specific date, will be discussed in a forthcoming public notice.

9. We are denying Pacific Bell's motion for stay. Pacific Bell has not demonstrated that it will suffer irreparable harm through meeting the Commission's January 6 filing requirement. Pacific Bell focuses on the refund option, and claims that it will suffer irreparable harm if it has to develop and implement mechanisms both to effect refunds that it states are unjustified, and later to recover the improper refunds. Pacific Bell Motion for Stay at 8. The *December 27 Order* does not, however, require carriers to implement refunds but rather, as noted above, permits carriers to choose among three options. Moreover, for carriers that choose to make refunds, the Order requires only that a refund plan be filed by January 6, not that refunds be made to customers by that date. Accordingly, Pacific Bell's assertion of irreparable injury is not well-founded.

10. Therefore, those LECs that have indicated that they will make refunds or revise their 1989 tariffs to effect the disallowances need make no filing on January 6.[8] Those LECs that have not yet selected one of the three options set forth in the *December 27 Order* must do so by January 6, either by proposing revisions to their 1988 tariffs, or by selecting one of the other available options. Carriers selecting the third option may make the requisite tariff filing in accordance with paragraph 8, above.

11. Accordingly, IT IS ORDERED that the motions for extension of time filed by the BellSouth Companies; the Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company; and New England Telephone and Telegraph Company and New York Telephone Company ARE GRANTED to the extent specified herein.

12. IT IS FURTHER ORDERED that the motions for extension of time filed by the Ameritech Operating Companies, Pacific Bell, and Cincinnati Bell Telephone Company ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Motion for Extension of Time of BellSouth Companies, filed Dec. 29, 1988; Motion for Extension of Time of Ameritech, filed Dec. 30, 1988; Motion To Extend Time of US West, filed Dec. 30, 1988; Motion To Extend Time of NYNEX, filed Jan. 3, 1989; Motion for Extension of Time of Cincinnati Bell, filed Jan. 4, 1989; and Motion To Extend Time of Pacific Bell, filed Jan. 5, 1989.

[2] Opposition to Motions for Extension of Time of the Ad Hoc Telecommunications Users Committee, filed Jan. 4, 1989.

[3] Annual 1988 Access Tariff Filings, CC Docket No. 88-1, Phase II, Memorandum Opinion and Order, FCC 88-420, released Dec. 27, 1988 (*December 27 Order*).

[4] Pacific Bell notes that the Commission may not have time to consider and rule upon its motion for stay, filed with its motion to extend time on January 5, 1989, before the January 6, 1989, filing date, and states that a denial of its request to extend time would effectively nullify its motion for stay.

[5] In their motions, Ameritech and Cincinnati do not affirmatively commit to any of the options nor do they rule out the selection of a mid-course correction to effect the required disallowances. Since we are denying their motions, Ameritech and Cincinnati must comply with the terms of the *December 27 Order* as indicated in paragraph 8.

[6] We reject Ad Hoc's argument, since parties will have an opportunity to comment on any revisions proposed in response to our requirements here.

[7] This date will apply as well to LECs who file on January 6 pursuant to the *December 27 Order* letters of intent to adjust their 1989 revenue requirement. Under the *December 27 Order*, such carriers would otherwise be required to file tariff revisions effecting such an adjustment by January 13, 1989.

[8] NYNEX indicates that it will employ either refunds or revisions of its 1989 access tariffs. NYNEX Motion at 3. BellSouth indicates that it will modify its 1989 access tariffs. BellSouth Motion at 2. US West indicates that it will use refunds. US West Motion at 3.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T COMMUNICATIONS Revisions to Tariff F.C.C. Nos. 9 and 11 — Transmittal Nos. 1359 and 1456

Private Line Educational Television Service

ORDER

Adopted: January 5, 1989; Released: January 6, 1989

By the Chief, Common Carrier Bureau:

1. On September 23, 1988, AT&T Communications (AT&T) filed the above-captioned proposed revisions to modify AT&T Tariff F.C.C. Nos. 9 and 11 as they pertain to the private line educational television (ETV) service provided to seven public television users, and for other purposes. On October 14, 1988,[1] six of these users filed three separate petitions to reject or, in the alternative, to suspend and investigate these revisions.[2] On that same date, the National Association of Public Television Stations (NAPTS) filed comments in support of these petitions. AT&T filed its reply on October 21, 1988. The proposed revisions are currently scheduled to take effect January 8, 1989.

2. Under these revisions, AT&T plans to increase various private line rates that it charges these ETV users. In particular, AT&T proposes increases in existing charges for interoffice channels (IOCs), the application of access coordination function (ACF) charges and central office connection (COC) charges to ETV users as well as commercial private line users, and the imposition of new charges for local channels (LCs) provided entirely by AT&T. Under the current proposal, AT&T will increase the IOC charges and implement the new LC charges in four stages with the first increase effective on July 1, 1989, and the last increase effective on that same date in 1990. Also under that proposal the new COC and ACF charges will become effective on July 1, 1989.

3. The petitioners raise a number of objections to these revisions. They generally object to the magnitude of the proposed increases, the extent of notice provided by AT&T, and an alleged failure to comply with Section 396(h) of the Communications Act, 47 U.S.C. § 396(h). EEN Petition at 10-13, 16-17; Georgia Petition at 5-6, 9-10; Iowa/Nebraska Petition at 5, 17-19. More specifically, they challenge AT&T's calculation of the proposed rates on various grounds. On the basis of these factors, petitioners ask the Bureau to reject these revisions as unjust, unreasonable, and therefore unlawful under Section 201 of the Communications Act, 47 U.S.C. § 201.

4. In its reply, AT&T addresses these objections. With regard to the magnitude of these changes, AT&T notes that the increases could have been larger and that it has attempted to mitigate their impact by a phase-in. AT&T Reply at 1-2, 4-5, 7. AT&T also notes that the size of a rate increase is not a basis for rejection or suspension of a tariff. *Id.* at 3. On the issue of notice, AT&T notes that in a January 1987 transmittal, it notified ETV users that it planned to file further increases and that the current transmittal represents such an increase. *Id.* at 5-6. The carrier also notes that it is phasing in these increases to provide ETV users with additional time to modify their budgets. With regard to Section 396(h), AT&T notes that its language and subsequent Commission Orders do not require that public broadcasters be provided with free service or reduced rates but they simply authorize such relief in the discretion of the carrier. *Id.* at 3-5.

5. With regard to the calculation of these proposed rates, AT&T states that while the Commission has authorized but not required an incremental cost approach in setting such rates, AT&T in fact uses such an approach in establishing and changing ETV rates. *Id.* at 6-8. Accordingly, AT&T claims that these revised rates are based on the incremental costs of providing existing ETV service alone and that AT&T is not charging increased rates to ETV users based upon its aggregate investment and expenses for all private line services. Thus, AT&T contends, ETV customers will not be subsidizing general private line or any other services. *Id.* at 9-10. With regard to the contention of some petitioners that their facilities are different, of lesser quality, or are not as well maintained as the facilities of others, AT&T notes, first, that since no ETV users have sought upgraded facilities since divestiture, no one such user is likely to have significantly better facilities than another. Second, AT&T asserts that it provides service, not facilities, to its ETV customers and that the service it does provide to each of these customers is alike in all "material functional respects." *Id.* at 10 n.*.

6. The Common Carrier Bureau has reviewed the tariff transmittals and the various pleadings and comments. We conclude that no compelling argument has been presented that the current tariff proposal is patently unlawful so as to require rejection and that no question has been presented that warrants suspension or investigation at this time.

7. IT IS THEREFORE ORDERED that the three petitions to reject or, in the alternative, to suspend and investigate AT&T Communications Tariff F.C.C. Nos. 9 and 11, Transmittal No. 1359, filed by the Eastern Educational Television Network, Inc., Maryland Public Television, and Louisiana Educational Television Authority, by the Georgia Public Telecommunications Commission, and by the Iowa Public Broadcasting Board and the Nebraska Educational Telecommunications Commission ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] *See* AT&T Communications, Order, DA 88-1600, released Oct. 11, 1988 (extending due date for petitions against the proposed revisions).

[2] The three petitions were filed by the EEN Group, consisting of Eastern Educational Television Network, Inc., Maryland Center for Public Broadcasting, and Louisiana Educational Television Authority (EEN Petition), by the Georgia Public Telecommunications Commission (Georgia Petition), and jointly by the Iowa Public Broadcasting Board and the Nebraska Educational Telecommunications Commission (Iowa/Nebraska Petition).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-599

In the Matter of

Amendment of Section 73.202(b),	RM-6036
Table of Allotments,	RM-6318
FM Broadcast Stations.	RM-6319
(Anna, Christopher and Herrin, Illinois and Lutesville, Missouri)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 30, 1988; Released: January 18, 1989

By the Deputy Chief, Policy and Rules Division:

1. At the request of Union Broadcasting, Inc. (petitioner), licensee of Station WRAJ(FM), Anna, Illinois, the Commission considers herein the *Notice of Proposed Rule Making*, 3 FCC Rcd 248 (1988), proposing the substitution of Channel 243C2 for Channel 224A at Anna, and the modification of the station's license to specify operation on the higher powered frequency. In response to the *Notice*, three counterproposals were filed. Missouri Bible Study Group and Illinois Bible Study Group filed a consolidated counterproposal requesting the allotment of Channel 243A to Lutesville, Missouri and Christopher, Illinois. Bluff City Broadcasting, Inc., filed a counterproposal requesting allotment of Channel 243A to Herrin, Illinois[2] and Saul Waksman filed a counterproposal requesting allotment of Channel 243A to Hickman, Kentucky [3]. Each of the counterproposals requests allotment of Channel 243A as a first local FM service. These proposals are mutually exclusive with each other and with the WRAJ(FM) upgrade. Petitioner filed comments reaffirming his intention to apply for the channel if allotted. Petitioner and Bluff City Broadcasting filed reply comments.

2. Petitioner, in its reply comments states that while the allotment of Channel 243C2 to Anna would preclude the allotment of Channel 243A to any of the counterproposal communities, this does not mean that the upgrade of WRAJ(FM) would prevent any of these communities from receiving a first FM allotment. Petitioner suggests as an alternative to the counterproposals requesting Channel 243A, that Channel 286A be allotted to Lutesville, Missouri, Channel 278A be allotted to Christopher, Illinois, and WRAJ(FM)'s current Channel 224A be allotted to Herrin, Illinois, if the Commission grants Union's upgrade proposal. Petitioner urges the adoption of its alternative proposal in order to provide a more efficient use of the radio spectrum without precluding the allotment of a Class A channel to any other community in this proceeding.

3. In its reply comments, Bluff contends that the Commission should reject the upgrade at Anna, Illinois, and allot Channel 243A to Herrin, because it is the largest among the counterproposal communities. Bluff contends that Herrin has more people than Hickman, Christopher, and Lutesville combined. Bluff states that since Herrin has no local FM broadcast service, the public would best be served by allotting Channel 243A as that community's first local FM service.

4. Our staff engineering analysis confirms that Channel 243C2 can be allotted to Anna, Illinois, with a site restriction 20.2 kilometers (12.6 miles) southwest of the city.[4] Channel 278A can be allotted to Christopher, Illinois with a site restriction 3.6 kilometers (2.2 miles) southeast.[5] Channel 224A can be allotted to Herrin, Illinois and Channel 286A can be allotted to Lutesville, Missouri in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules.[6] Thus, allotments are available to all four communities without the need for a community comparison.

5. Based on the above information presented in this case, we believe the public interest would best be served by providing Christopher and Herrin, Illinois and Lutesville, Missouri each with a first local FM service and a wider coverage area station at Anna, Illinois. In accordance with Section 1.420(g) of the Commission's Rules, we shall authorize the modification of the license Station WRAJ(FM) to specify operation on the higher class Channel 243C2 in lieu of Channel 224A.

6. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 3, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Anna, Illinois	243C2
Christopher, Illinois	278A
Herrin, Illinois	224A
Lutesville, Missouri	286A

7. The window period for filing applications for Christopher, Illinois, Channel 278A, Herrin, Illinois, Channel 224A and Lutesville, Missouri, Channel 286A will open on **March 6, 1989,** and close on **April 5, 1989.**

8. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WRAJ(FM), Anna, Illinois, IS MODIFIED, to specify operation on Channel 243C2 in lieu of Channel 224A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The communities of Christopher and Herrin, Illinois, and Lutesville, Missouri have been added to the caption.

[2] Public Notice of the counterproposals was given on April 1, 1988, Report No. 1720, RM-6318 and RM-6319.

[3] Saul Waksman withdrew his counterproposal by letter dated March 24, 1988.

[4] The coordinates for Channel 243C2 at Anna are 37-22-31 and 89-26-51.

[5] The coordinates for Channel 278A at Christopher are 37-57-59 and 89-00-38.

[6] The coordinates for Channel 224A at Herrin, Illinois are 37-48-12 and 89-01-36, and the coordinates for Channel 286A at Lutesville, Missouri are 37-18-01 and 89-58-52.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-441

In the Matter of

Amendment of Section 73.202(b),	RM-5993
Table of Allotments,	
FM Broadcast Stations.	
(Pinedale, Wyoming)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 30, 1988; Released: January 18, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 2 FCC Rcd 6367 (1987), issued at the request of Phillip W. O'Bryan (petitioner), proposing the allotment of Channel 266C2 to Pinedale, Wyoming, as that community's first local FM service. Petitioner filed comments withdrawing his interest in the proposal. We shall comply with petitioner's request. However, in response to the *Notice*, supporting comments were filed by Connie Lyn Gardner (Gardner), stating an interest in applying for the channel. Therefore, further consideration will be given to the allotment of Channel 266C2 to Pinedale at the request of Gardner in lieu of the petitioner.

2. In view of the foregoing we believe the public interest would be served by allotting Channel 266C2 to Pinedale, Wyoming, as that community's first local FM service. The channel allotment can be made to Pinedale in compliance with the Commission's minimum distance separation requirements.[1]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 3, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Pinedale, Wyoming	266C2

4. The window period for filing applications will open on **March 6, 1989,** and close on **April 5, 1989.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The reference coordinates are 42-51-54 and 109-51-48.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-185

In the Matter of

Amendment of Section 73.202(b),	RM-6288
Table of Allotments,	RM-6499
FM Broadcast Stations.	
(Montgomery, Dunbar and	
Mount Gay-Shamrock, West Virginia)	

FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: December 2, 1988; Released: January 18, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 3 FCC Rcd 2555 (1988), issued at the request of Upper Kanawha Valley Broadcasters, Inc. (Upper Kanawha), proposing the allotment of Channel 227A to Montgomery, West Virginia, as a first local FM service. The Commission also has before it the petition for rule making filed by Donald Mills, d/b/a West Virginia Rural Radio Company (WV Rural Radio), permittee of Station WBES-FM, Channel 233A at Dunbar, West Virginia, seeking the substitution of Channel 233B1 for Channel 233A at Dunbar, and modification of the station's construction permit accordingly. In order to accomplish the substitution at Dunbar, WV Rural Radio suggests the substitution of Channel 227A for vacant and unapplied for Channel 234A at Mount Gay-Shamrock, West Virginia.[1] Channel 227A at Mount Gay-Shamrock conflicts with the proposed allotment of the same channel to Montgomery, thus it is necessary to consider the petition herein. WV Rural Radio also suggests as an alternate action that the Commission consider the deletion of Channel 234A without a replacement channel. WV Rural Radio submitted information in support of its proposal to provide Dunbar with a first wide coverage area FM service. In response to the *Notice* Upper Kanawha filed supporting comments reaffirming its intention to apply for the channel at Montgomery.

2. Our engineering analysis has confirmed that Channel 233B1 can be allotted to Dunbar in compliance with the Commission's minimum distance separation requirements with a site restriction if Channel 227A is substituted for Channel 234A at Mount Gay-Shamrock.[2] A site restriction of 13.1 kilometers (8.2 miles) northeast of Dunbar is required in order to avoid short spacings to Station WVMA(FM), Channel 231B at Oak Hill, West Virginia, and Station WKLC-FM, Channel 286B at St. Albans, West Virginia. [3] As specified in the *Notice* Channel 227A can be allotted to Montgomery consistent with the Commission's minimum distance separation requirements with a site restriction of 6.5 kilometers (4 miles) west of the community.[4] The restriction is necessary in order to avoid short spacings to Station WCWV(FM), Channel 225B, Summersville, West Virginia, and vacant and unapplied for Channel 227A at White Sulphur Springs, West Virginia. The proposals are mutually exclusive since they are separated by less than the required 105 kilometers (65 miles) for co-channel allotments.

3. Since the proposals are mutually exclusive we attempted to resolve the conflict by determining if there were other channels available at either community. Our initial engineering analysis has found Channel 227A to be the only available channel at either community. In view of this determination we are faced with conflicting proposals for either a first local service at Montgomery or modification of the station facilities at Dunbar. Therefore the proposals must be comparatively considered. The issuance of this *Further Notice* is for the purpose of soliciting comments on the optional proposals presented by WV Rural Radio. Moreover, we shall provide WV Rural Radio an opportunity to demonstrate in comments herein why its proposed upgrade should prevail over the provision of a first local service at Montgomery. In this regard, WV Rural Radio should be guided by the allocation criteria set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982), specifying the provision of first or second aural service, since the Commission generally favors a first local service.[5]

4. We find that if Channel 234A were deleted from Mount Gay-Shamrock, as suggested as an alternative proposal by WV Rural Radio, both proposals could be granted. Generally, the Commission will not routinely entertain a proposed channel deletion absent a compelling showing of need or Commission error.[6] Here, based on the information presented we believe it is in the public interest to seek comments on the proposed deletion of Channel 234A from Mount Gay-Shamrock as well as the substitution of Channel 233B1 for Channel 233A at Dunbar.

5. As requested, we shall propose to modify the permit of Station WBES-FM to specify operation on the higher class co-channel, Channel 233B1. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest nor require that WV Rural Radio demonstrate the availability of an additional equivalent channel at Dunbar.

6. In view of the aforementioned, the Commission seek comments on alternative proposals to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following communities:

City	Channel No. Present	Proposed
OPTION I		
Montgomery, West Virginia	---	227A
Dunbar, West Virginia	233A	233A
Mount Gay-Shamrock, West Virginia	234A	234A

OPTION II

Montgomery, West Virginia	---	---
Dunbar, West Virginia	233A	233B1
Mount Gay-Shamrock, West Virginia	234A	227A

OPTION III

Montgomery, West Virginia	—	227A
Dunbar, West Virginia	233A	233B1
Mount Gay-Shamrock, West Virginia	234A	---

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **March 10, 1989,** and reply comments on or before **March 27, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Jeffrey R. Batten
Manager, Upper Kanawha Valley
Broadcasters, Inc.
1028 First Avenue
Montgomery, West Virginia 25136
(Petitioner for Montgomery, West Virginia)

Leonard S. Joyce, Esquire
Blair, Joyce & Silva
1825 K Street, N.W.
Washington, D. C. 20006
(Counsel for proponent at Dunbar, West Virginia)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Channel 234A was allotted to Mount Gay-Shamrock, West Virginia, in MM Docket No. 84-231. No applications were filed during the window period which closed on March 10, 1988.

[2] The reference coordinates for the vacant allotment are 37-51-00 and 82-00-06.

[3] The restricted site coordinates are 38-27-34 and 81-39-17.

[4] The restricted site coordinates are 38-09-47 and 81-23-40.

[5] The allocation criteria are as follows: (1) first aural service; (2) second aural service; public interest matters. Co-equal weight is given to priorities (2) and (3).

[6] *See Memorandum Opinion and Order,* 50 FR 47391 (1985).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-143

In the Matter of

Amendment of Section 73.202(b), RM-6159
Table of Allotments.
FM Broadcast Stations.
(Cloquet and Grand Marais,
Minnesota)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 9, 1988; Released: January 18, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 3 FCC Rcd 2185 (1988), proposing the substitution of FM Channel 263C1 for Channel 265A at Cloquet, Minnesota. The *Notice* was issued in response to a petition filed by WKLK, Inc. (petitioner). Petitioner also requested modification of its license for Station WKLK-FM to specify operation on the higher class channel. To accommodate petitioner's proposal, it is necessary to delete Channel 263C at Grand Marais, Minnesota. Petitioner filed comments and reply comments reaffirming its interest in Channel 263C1 at Cloquet. Timothy D. Martz filed comments.

2. We believe the public interest would be served by the substitution of FM Channel 263C1 for Channel 265A at Cloquet, since it could provide the community with its first wide coverage area FM service. The substitution can be made in compliance with the minimum distance separation requirements of the Commission's Rules provided there is a site restriction 8.9 kilometers (5.5 miles) northeast of the community.[1] The site restriction will prevent a conflict with Station WCTS-FM, Channel 262C1, Minneapolis, Minnesota. As indicated in the *Notice*, it is also necessary to substitute Channel 237C for Channel 263C at Grand Marais, Minnesota.[2] Timothy D. Martz is the applicant for Channel 263C at Grand Marais (870908MK) and filed comments in this proceeding agreeing to the substitution of channels. The substitution at Grand Marais can be accomplished in compliance with the minimum distance separation requirements at the current application site for Channel 263C. Therefore, we shall substitute FM Channel 237C for Channel 263C at Grand Marais, Minnesota, and in accordance with Commission policy, retain the applicant's filing protection for Channel 263C for Channel 237C, since the class of channel is equivalent. *See Phillipsburg, Kansas* 48 FR 10844 (1983). Since the communities of Cloquet and Grand Marais, Minnesota, are within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained.

3. We have authorized a modification of petitioner's license for Station WKLK-FM, Cloquet, Minnesota, to specify operation on Channel 263C1 in accordance with Section 1.420(g) of the Commission's Rules.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 3, 1989**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Cloquet, Minnesota	263C1
Grand Marais, Minnesota	237C

5. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station WKLK-FM, Cloquet, Minnesota, IS MODIFIED to specify operation on Channel 263C1, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The coordinates for Channel 263C1 at Cloquet are 46-45-40 and 92-22-12.

[2] The coordinates for Channel 237C at Grand Marais are 47-59-13 and 90-24-12.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-72

In the Matter of

Amendment of Section 73.202(b), RM-6157
Table of Allotments,
FM Broadcast Stations.
(Brookings, South Dakota)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 9, 1988; Released: January 18, 1989

By the Deputy Chief, Policy and Rules Division:

1. At the request of Dakota Broadcasting, Inc. (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 3 FCC Rcd 1016 (1988), proposing the substitution of Channel 229C2 for Channel 232A at Brookings, South Dakota, and the modification of its license for Station KGKG to specify the higher powered channel. Petitioner filed comments reiterating its intention to apply for the channel, if allotted. No oppositions to the proposal were received.

2. In reviewing the record before us, the staff has discovered that the Brookings channel change was not entered into the Commission's FM data base. As a result, when the *Notice* herein was adopted in February, 1988, it did not also seek comments on the conflicting request of Vaughn Broadcasting Group (Vaughn), which had been filed in December, 1987, requesting the substitution of Channel 230C2 for Channel 228A at Sioux Falls, South Dakota (RM-6198). That request, along with the mutually exclusive request of Tri-State Broadcasters, Inc. (Tri-State) to substitute Channel 230C2 for Channel 232A at Sioux Center, Iowa, has now been resolved by substituting Channel 279C2 for Channel 228A at Sioux Falls and granting the Tri-State request as originally proposed. *See* MM Docket 88-165, *Report and Order* adopted September 28, 1988.

3. We believe the public interest would be served by substituting Channel 229C2 for Channel 232A at Brookings, South Dakota, since it could provide the community and its environs with expanded radio service. Channel 229C2 can be allotted to Brookings in compliance with the Commission's minimum distance separation requirements and can be used at Station KGKG's present transmitter site based on the above mentioned substitution of Channel 279C2 for Channel 228A at Sioux Falls, South Dakota.[1] As proposed, we shall also modify herein Station KGKG's license to specify operation on Channel 229C2.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 3, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Brookings, South Dakota	229C2

5. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Dakota Broadcasting, Inc. for Station KGKG, Brookings, South Dakota, IS MODIFIED to specify operation on Channel 229C2 in lieu of Channel 232A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 44-18-13 and West Longitude 96-46-10.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-474

In the Matter of

Amendment of Section 73.202(b),	RM-5855
Table of Allotments,	RM-5878
FM Broadcast Stations.	RM-5915
(Springdale, Arkansas, Carthage, Aurora and Willard, Missouri)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 28, 1988; Released: January 18, 1989

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making and Order to Show Cause*, 2 FCC Rcd 6690 (1987), seeking comments on three proposals involving four communities. The proposals set forth in the *Notice* were:

(A) Substitute Channel 285C2 for Channel 285A at Springdale, Arkansas, and modify the license of Station KCIZ(FM), at the request of Moran Broadcasting Company (MBC), to provide that community with its first wide coverage area FM service. In order to accommodate this change, MBC requested the substitution of Channel 250A for Channel 285A at Carthage, Missouri, and modification of the license of Station KRGK(FM). MBC advised that if its proposal is adopted, it will reimburse Station KRGK(FM) for the reasonable costs incurred in changing its channel of operation (RM-5855). An *Order to Show Cause* was issued to Station KRGK(FM) directing the licensee to demonstrate why it should not be modified to specify operation on Channel 250A in lieu of Channel 285A in the event its separate proposal is not chosen as a result of our comparative analysis in this proceeding.

(B) Substitute Channel 286C2 for Channel 285A at Carthage, Missouri, and modify the license of Station KRGK(FM), to provide that community with its first wide coverage area FM service, as requested by Carthage Broadcasting Company (CBC) (RM-5878).

(C) Substitute Channel 263C2 for Channel 261A at Aurora, Missouri, and modify the license of Station KELE(FM), to provide that community with its first expanded coverage FM service, at the request of Aurora Broadcasting, Inc. (ABI). In order to accommodate its request, ABI requested the substitution of Channel 286C2 for Channel 263A at Willard, Missouri,[1] to provide that community with its first expanded coverage facility.

2. The *Notice* set forth the three proposals in two options, as follows:

OPTION I

City	Channel No. Present	Proposed
Springdale, Arkansas	285A	285C2
Aurora, Missouri	261A	263C2
Carthage, Missouri	285A	250A
Willard, Missouri	263A	286C2

OPTION II

Carthage, Missouri	285A	286C2

3. As indicated in the *Notice*, the proposal for Channel 285C2 at Springdale, Arkansas, conflicts with the proposal for Channel 286C2 at Carthage, Missouri. At a transmitter site 27.3 kilometers northwest for the Springdale proposal,[2] and 4.4 kilometers north for the Carthage proposal, [3] the distance between the proposals is 99.0 kilometers whereas 130 kilometers is required between first adjacent Class C2 channels. Additionally, the Carthage proposal conflicts with the proposal for Channel 286C2 at Willard, Missouri, based on a site 11.0 kilometers west of the latter community.[4] The distance between the two proposals is 68.8 kilometers whereas 190 kilometers is required between Class C2 co-channels. Moreover, the present allotment of Channel 263A at Willard[5] must be changed to accommodate proposed Channel 263C2 at Aurora, Missouri.[6] The distance between the two reference points is 27.0 kilometers whereas 163 kilometers is required between Class A and C2 co-channels. Changing the Willard allotment to Channel 286C2 would remove the impediment to the Aurora proposal.

4. In response to the *Notice*, MBC and ABI filed supporting comments. CBC filed comments and a counterproposal, as well as an amendment thereto, withdrawing its modification proposal at Carthage and seeking the allotment of Channel 286C2 to Nixa, Missouri, instead, as that community's first local service.[7] St. Joseph Radio Limited Partnership (SJR), licensee of Station KSFT-FM, St. Joseph, Missouri, filed comments in partial opposition. John Morgan (Morgan) and Damon E. Campbell (Campbell) each filed comments in support of the proposed substitution of Channel 286C2 at Willard, Missouri. C.R. Crisler (Crisler) submitted untimely comments and a counterproposal.[8] Red White and Blue Communications, licensee of Station KAJJ(FM), Greenwood, Arkansas, also filed late comments.[9] MBC, ABI and SJCC filed reply comments.[10]

5. MBC asserts that none of the proposals in this proceeding would provide any first fulltime or second aural service. Thus, MBC avers, according to the Commission's allotment priorities, it is appropriate to compare the conflicting proposals to determine which will provide new primary service to the larger population, citing *Greenup*,

KY and Athens, OH, 2 FCC Rcd 4319, 4321 (1987). MBC and ABI each claim that their combined proposals would serve approximately four times as many persons as that of CBC's, and thus their proposals should be preferred.[11]

6. SJR, licensee of Station KSFT-FM, Channel 286C1, St. Joseph, Missouri, seeks the adoption of limited site restrictions on the Springdale, Arkansas, and Willard, Missouri, proposed allotments, claiming that the proposed substitution of Channel 286C2 for Channel 263A at Willard, Missouri will create an 8 kilometer short spacing to the site specified in its modification application (BPH-870225MG). SJR's concern is based on the 28.9 kilometer northeast site specified in MBC's proposal at Springdale, as well as the 23.0 kilometer north site specified by ABI for the Willard proposal. However, utilizing the sites the Commission specified in the *Notice* (*i.e.*, 27.3 kilometers northwest of Springdale and 11.0 kilometers west of Willard, to which MBC and ABI have agreed), SJR's concern is unfounded as both proposals are fully spaced to the proposed site for Station KSFT-FM. Thus, SJR's opposition will not be addressed further.

7. In view of the foregoing, since CBC's modification proposal at Carthage was withdrawn, and its counterproposal at Nixa has been rejected, there is no need to perform a comparative analysis among the Springdale, Willard and Aurora proposals since each may be accommodated. We believe there are public interest benefits to be gained by the three modification proposals since each will provide benefits by improving service and expanding coverage to populations within their proposed primary service contours. Thus, in accordance with the provisions of Section 1.420(g) of the Commission Rules, we will substitute Channel 285C2 for Channel 285A at Springdale, Arkansas, and modify the license of Station KCIZ(FM), accordingly. As indicated *supra*, Channel 285C2 can be allotted to Springdale with a site restriction 27.3 kilometers northwest. Moreover, in order to accommodate the Springdale modification, we will substitute Channel 250A for Channel 285A at Carthage, Missouri. Channel 250A at Carthage can be allotted at the current licensed site of Station KRGK(FM).[12] Channel 236C2 will be substituted for Channel 261A at Aurora, Missouri, and the license of Station KELE(FM) modified, as requested. Channel 236C2 can be allotted to Aurora with a site restriction 20.9 kilometers northeast[13] of the community. Channel 286C2 will be substituted for Channel 263A at Willard, Missouri, to accommodate the Aurora, Missouri modification. Channel 286C2 can be allotted to Willard with a site restriction 11.0 kilometers west of the community.[14] As indicated, *supra*, Channel 263A at Willard has two applications pending. Thus, those applicants will be permitted to amend their applications to specify the higher class channel without loss of cut-off protection since the Public Notice announcing the acceptance of applications at Willard indicated the possibility of an upgrade at that community. Therefore, we will not open another application filing window for Channel 286C2 at Willard.[15] *See, Albert Lea, Red Wing and Stewartville, MN*, 3 FCC Rcd 5553 (1988).

8. Revised Section 1.87 of the Commission's Rules no longer affords a station affected by a proposed change in the Table of Allotments an automatic right to a hearing on request.[16] Rather, the affected station must raise a substantial and material question of fact as required by Section 309 of the Communications Act of 1934, as amended, in order to be entitled to a Section 316 hearing. As indicated in the *Notice and Order to Show Cause* herein, CBC, the Carthage licensee, was advised that pursuant to the requirements of Section 1.87 of the Commission's Rules, it was required to show, with particularity, why its license should not be modified, as proposed. CBC did not respond, as requested, but rather filed a counterproposal which we rejected based on technical deficiencies. Thus, since CBC has not raised the requisite substantial and material question of fact nor a valid reason for denial of the Springdale, Arkansas, and Willard and Aurora, Missouri proposals, we are herein modifying the license of Station KRGK(FM) to specify operation on Channel 250A in lieu of Channel 285A at Carthage, Missouri, as optionally proposed in the *Notice*.

9. Commission policy requires reimbursement to affected stations for the reasonable costs associated with changing frequencies. *See Circleville and Columbus, Ohio*, 8 FCC 2d 159 (1967). Here, MBC and ABI will each benefit from the Carthage substitution and therefore must share in the reimbursement costs to Station KRGK(FM). *See Naguabo, Puerto Rico*, 51 FR 30363, published August 26, 1986. The two applicants at Willard are not affected by our reimbursement policy. MBC has previously agreed to reimburse CBC for its reasonable costs in switching channels. Since the Aurora modification proposal requires the Willard change, which in turn requires the Carthage substitution, ABI will be required to also share in such reimbursement costs. Although ABI has not specifically stated its willingness to share in the reimbursement costs to Station KRGK(FM), it comments that if its proposal is adopted, " . . . it will promptly undertake all procedures necessary to upgrade and license Radio Station KELE(FM) as a Class C2 facility . . . ." We interpret this as ABI expressing its willingness to share in the reimbursement costs with MBC.

10. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 3, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED to read as follows:

City	Channel No.
Springdale, Arkansas	285C2
Aurora, Missouri	263C2
Carthage, Missouri	250A
Willard, Missouri	286C2

11. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Moran Broadcasting Company for Station KCIZ(FM), Springdale, Arkansas, IS MODIFIED, effective **March 3, 1989** to specify operation on Channel 285C2 in lieu of Channel 285A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

12. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Aurora Broadcasting, Inc. for Station KELE(FM), Aurora, Missouri, IS MODIFIED, effective **March 3, 1989,** to specify operation on Channel 263C2 in lieu of Channel 261A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

13. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Carthage Broadcasting, Company for Station KRGK(FM), Carthage, Missouri, IS MODIFIED effective **March 3, 1989,** to specify operation on Channel 250A in lieu of Channel 285A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station KRGK(FM)'s license [BLH-870302KA] except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license BLH-870302KA except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

14. IT IS FURTHER ORDERED, That the petition for rule making filed by Carthage Broadcasting Company (RM-5878), IS DENIED.

15. IT IS FURTHER ORDERED, That the Secretary SHALL SEND a copy of this *Order* by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to Ladco Communications, Inc., Radio Station KTOZ-FM, 2607 West Bennett, Springfield, MO 65807, and to the following applicants for Channel 263A at Willard, MO:

William Walter Muench
P.O. Box 111
Willard, MO 65781
[BPH-880126NO]

MW Multicom, Inc.
3200 Pine Tree Road
Lansing, MI 48911
[BPH-880126OI]

16. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

17. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Channel 263A was allotted to Willard, Missouri in MM Docket No. 84-231, for which the window opened May 12, 1988, and closed June 16, 1988. During that time, two applications were filed. William Walter Muench filed one application (BPH-880126NO), and M W. Multicom, Inc. filed the other (BPH-880126OI). The window notice announcing the availability of Channel 263A at Willard advised of the proposal in this proceeding to change the channel and class to 286C2. *See Public Notice*, released December 16, 1987, Report No. W-30.

[2] Reference coordinates used for Channel 285C2 at Springdale are 36-19-47 and 94-22-55.

[3] Reference coordinates used for Channel 286C2 at Carthage are 37-13-11 and 94-18-36.

[4] Reference coordinates for Channel 286C2 at Willard are 37-19-35 and 93-32-47.

[5] Reference coordinates for present Channel 263A at Willard are 37-17-41 and 93-25-04.

[6] The Aurora proposal requires a site restriction 20.9 kilometers northeast, at reference coordinates 37-03-51 and 93-30-48, to avoid short-spacing to Station KUKU-FM (formerly Station KWCJ(FM)), Channel 262C2, Willow Springs, Missouri, at reference coordinates 37-03-49 and 92-01-39.

[7] However, CBC's counterproposal and amendment thereto are unacceptable for consideration and therefore were not placed on public notice. A staff review of the proposal reveals that, using CBC's reference coordinates for Nixa (*i.e.*, 36-46-00 and 93-17-02), Channel 286C2 is 2.7 kilometers short spaced to the site restriction placed on the modification proposal of Station KTOZ-FM, Marshfield, Missouri, in MM Docket No. 86-302 to upgrade its facilities on Channel 284C2 at reference coordinates 37-13-20 and 92-54-20 . Moreover, it is 8.1 kilometers short spaced to the licensed site of Station KCIZ(FM), Channel 285A, Springdale, Arkansas, and 4.3 kilometers short spaced to the licensed site of Station KRGK(FM), Channel 285A, Carthage, Missouri. Although CBC attempted to correct the deficiencies in

an amendment, arguing that the new reference coordinates supplied in the amendment were submitted in order to correct a typographical error in the counterproposal, the amendment is equally unacceptable. The new coordinates, 36-46-30 and 93-10-30, differ significantly from those previously submitted in a manner not readily explainable as a typographical error. In addition, we note that the counterproposal, when submitted, contained no spacing study. Counterproposals must be technically correct and substantially complete when filed in order to afford all parties an opportunity to fully respond in reply comments. *See Broken Arrow, Oklahoma*, 53 FR 46086 (1988). In addition, we note that the amended Nixa counterproposal is short spaced both to the reference coordinates for KTOZ-FM's upgrade at Marshfield, Missouri, and to the application for that upgrade filed by KTOZ-FM.

[8] Crisler's comments and counterproposal were filed after the cut-off date established in this proceeding and were not accompanied by a motion to accept. Therefore, pursuant to Section 1.420(d) of the Rules, they are unacceptable for consideration herein. *See, Columbia, Jamestown and Smiths Grove, KY*, 47 FR 40431 (1982).

[9] RWBC's comments are equally unacceptable for consideration since they were filed after the cut-off date specified in the proceeding.

[10] In addition, Crisler submitted late-filed reply comments, to which MBC responded. CBC filed a Petition to Submit Supplemental Reply Comments and Supplemental Reply Comments to which MBI and ABI each responded. Crisler also filed additional reply comments as well as a petition for leave to amend. In accordance with Section 1.415(d) of the Commission's Rules, we have not considered those late-filed pleadings.

[11] We note that MBC and ABI's population estimates differ slightly. MBC claims that the Springdale, Aurora and Willard proposals would bring new service to 426,514 persons as follows: *Springdale* - 97,867, *Aurora* - 237,768, and *Willard* - 90,879, versus a gain at *Carthage* of 126,086. ABI's estimate claims new service would be provided to 461,416 persons as follows: *Springdale* - 111,338, *Aurora* - 236,735, *Willard* - 113,343, versus a gain at *Carthage* of 96,623.

[12] Reference coordinates at the licensed site of Station KRGK(FM) are 37-10-58 and 94-21-35.

[13] Reference coordinates at the restricted site for Channel 263C2 at Aurora, Missouri are 37-03-51 and 93-30-48.

[14] As indicated above, the reference coordinates used for Channel 286C2 at Willard are 37-19-35 and 93-32-47. Although the Willard site restriction is 6.6 kilometers short spaced to the site specified by Station KTOZ-FM, Channel 284C2, Marshfield, Missouri, (File No. 880211MQ), it meets the spacings requirements to the site restriction placed on the latter's modification proposal in MM Docket No. 86-302, at reference coordinates 37-13-20 and 92-54-20. Moreover, we are unaware of an instance in which the Commission has protected an applicant's preferred transmitter site from a rule making petition which proposes a new service. As the Commission has held previously, an applied for, but unauthorized transmitter site generally reflects a preference for a particular location and thus is not favored over the provision of a new service. *See, Andalusia, Alabama*, 49 FR 32201, August 13, 1984, and cases cited therein. Thus, Station KTOZ-FM will be required to amend its modification application to specify a nonconflicting transmitter site. In view of our determination, we will direct the Secretary of the Commission to serve the licensee of Station KTOZ-FM with a copy of this *Order*.

[15] In making this determination, we are aware of the two commentors in support of the Willard upgrade, both of whom expressed their intent to apply for Channel 286C2 if allotted. However, they are cut-off from the application process for Channel 286C2 since the Commission, in previously announcing the availability of Channel 263A at Willard, indicated the possibility of an upgrade at that community. (*see Public Notice, supra*, at fn. 1). Thus, all interested applicants should have applied for the Willard allotment during the open window period specified for Channel 263A.

[16] *See Modification of FM or Television Licenses Pursuant to Section 316 of the Communications Act*, 2 FCC Rcd 3327 (1987).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-136

In the Matter of

NEW ENGLAND TELEPHONE COMPANY
Revisions to Tariff F.C.C. No. 40

Transmittal No. 949

ORDER

Adopted: December 2, 1988; Released: December 7, 1988

By the Chief, Common Carrier Bureau:

1. On October 27, 1988, New England Telephone Company (NET) filed Transmittal No. 949, establishing rates and charges for a specialized arrangement for Superpath Optical 45 Mbps Service (DS3). These tariff revisions became effective on November 19, 1988.[1]

2. On November 14, 1988, Teleport Communications Group (TCG) filed a petition to reject Transmittal 949 on the ground that the bundling of rates proposed therein is an unreasonable practice under Section 201 of the Communications Act, 47 U.S.C. § 201.[2] TCG further requests that Transmittal 949, as well as all future transmittals similarly providing for ICB rates for Superpath Optical 45 Mbps Service (DS3), be incorporated into the pending investigation of ICB tariffing of DS3 services. [3] On November 28, 1988, NET filed a reply opposing TCG's petition to reject.[4]

3. The Common Carrier Bureau has reviewed Transmittal 949, the petition filed by TCG, and NET's reply. We find that no compelling arguments have been presented that the tariff filing is patently unlawful so as to require rejection. However, to the extent that Transmittal 949 proposes ICB rates for DS3 services, we already granted TCG's request that Transmittal 949 be included in the ongoing investigation instituted in CC Docket No. 88-136. *See November 14 Order* at para. 3.

4. Accordingly, IT IS ORDERED, that the petition to reject filed by Teleport Communications Group against New England Telephone Company, Tariff F.C.C. No. 40, Transmittal No. 949, IS GRANTED to the extent indicated herein, but otherwise IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] On November 14, 1988, the Common Carrier Bureau released an Order (*November 14 Order*) incorporating Transmittal 949 and six other transmittals into the investigation of Individual Case Base (ICB) rates for DS3 services instituted in CC Docket No. 88-136. The *November 14 Order* inadvertently stated that no petitions had been filed to reject, suspend, or investigate any of these transmittals. That Order also granted all carriers which had filed transmittals special permission to advance the effective dates of their transmittals. Accordingly, NET filed tariff revisions to advance the effective date of Transmittal 949 from December 1, 1988, to November 19, 1988.

[2] TCG Petition To Reject, filed Nov. 14, 1988 (TCG Petition).

[3] *Id.* at 1.

[4] NET Reply to Petition To Reject, filed Nov. 28, 1988.

Before the
Federal Communications Commission
Washington, D.C. 20554

MARKETING RESEARCH SERVICES, INC.,
Complainant,

v.

AT&T COMMUNICATIONS OF OHIO, INC., File No. E-87-61

and

CINCINNATI BELL TELEPHONE COMPANY, File No. E-87-62
Defendants.

ORDER

Adopted: January 5, 1989; Released: January 18, 1989

By the Chief, Enforcement Division, Common Carrier Bureau:

1. On May 26, 1987, Marketing Research Services, Inc. (MRS), filed a formal complaint against AT&T Communications of Ohio (AT&T) and Cincinnati Bell Telephone Company (Cincinnati Bell). MRS alleged that AT&T and Cincinnati Bell charged unjust and unreasonable rates and failed to comply with their common carrier obligations in violation of Sections 201 and 202 of the Communications Act, 47 U.S.C. §§ 201, 202. MRS asked the Commission to find that it did not owe a charge it was disputing between the complainant and AT&T.[1]

2. The parties have since been conducting negotiations, with the assistance of the Enforcement Division, aimed at settling the matters in controversy. On December 12, 1988, the parties jointly moved to dismiss with prejudice the above-captioned cases, stating that the the parties had settled their dispute. On the basis of the statements contained in the parties' joint motion, we conclude that there are no longer issues in controversy and the proceeding should be terminated.

3. Accordingly, IT IS ORDERED, pursuant to the authority delegated in 47 C.F.R. § 0.291, that the Motion to Dismiss, filed jointly by Marketing Research Services, Inc., AT&T Communications of Ohio, and Cincinnati Bell Telephone Company IS GRANTED.

4. IT IS FURTHER ORDERED that the above-captioned complaints filed by Marketing Research Services, Inc. ARE DISMISSED with prejudice.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Enforcement Division
Common Carrier Bureau

FOOTNOTE

[1] Although the relief sought by MRS were allegedly a result of AT&T's actions, MRS apparently joined Cincinnati Bell as a defendant because Cincinnati Bell was acting as AT&T's billing agent and had threatened to terminate service to MRS for failure to pay its bill.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T COMMUNICATIONS Transmittal Nos. 1265
Tariff F.C.C. Nos. 9, 10, and 11 and 1391

Digital Interface and
Shared Facility Arrangements

ORDER

Adopted: December 12, 1988; Released: December 13, 1988

By the Deputy Chief, Common Carrier Bureau:

1. By Transmittal No. 1265, AT&T Communications (AT&T) proposes two revisions to its provision of voice grade (VG) private line services under the captioned tariffs. AT&T's proposal specifies that access arrangements provided for connection to voice grade private line services, at AT&T offices wholly converted to digital facilities, should henceforth be furnished only over access facilities that present a digital interface suitable for deriving voice grade channels at the AT&T offices. AT&T also proposes revisions to Tariff No. 11, by which it offers access, styled as Local Channel Service. These revisions for the first time specify the compensation owed AT&T by local exchange carriers (LECs) when they elect to implement voice grade special access by retrieving individual circuits from existing high capacity facilities leased to AT&T (rather than relying on facilities under their direct control).

2. AT&T's original proposal was challenged by several of the regional Bell Operating Companies (BOCs).[1] To improve our understanding of issues raised by the proposal and petitions, Bureau staff held an informal meeting with representatives of AT&T and several exchange carriers on August 25, 1988. At that meeting the Bureau sought, and subsequently received, informal comments from attendees on several questions. After the Bureau reviewed these comments and discussed the proposals further with AT&T, AT&T by Transmittal No. 1391 submitted modifications to its proposal that limit the application of compensation arrangements proposed in Tariff No. 11 to the LECs' use of shared facilities to provide special access service.[2]

3. In its initial filing, AT&T states that it is both establishing new all-digital central offices and converting existing analog central offices to digital technology, to improve operating performance over its network. Rather than preserve older offices' capability to perform analog-to-digital conversions, or establish that capability in the newer digital offices, an approach assertedly entailing tens of millions of dollars,[3] AT&T maintains that the limited customer desire for such conversion capability at its central offices warrants the proposed requirement that access facilities present a digital interface for connection at the AT&T central office. AT&T asserts that the digital interface requirement will have no effect on the bulk of its private line customers, who order their services through AT&T's end-to-end service configuration, as AT&T will obtain digitally interfaced access circuits from LECs and employ the circuits to provide the access component furnished by AT&T as Local Channel Service under Tariff No. 11. These customers, AT&T contends, will perceive no provisioning changes or additional charges as the network adapts to the provision of access through a digital interface. AT&T Transmittal No. 1265, D&J at 3-4.

4. Petitioners contend that a series of difficulties arises with respect to transitioning VG private line service, especially when provided to end users who have chosen alternative access ordering arrangements. Maintaining comparable service continuity for these customers, who employ the Baseline or Coordinated Service ordering options established by AT&T's post-divestiture private line tariffs, allegedly entails difficulties in that AT&T's revisions constrain LECs to reconfigure facilities or compensate AT&T for the continued use of shared facilities to provide special access. BellSouth Tr. 1265 Petition at 2-4; Pacific Bell Tr. 1265 Petition at 4-5; Southwestern Bell Tr. 1265 Petition at 5-7. The LECs assert that such arrangements are initiated by AT&T (acting as the customer's agent), that AT&T has and maintains control of the high capacity facility including channel assignments, and that AT&T is the LEC's customer of record. Thus, petitioners contend, the existing service is an AT&T obligation and any changes forced upon the LECs, and hence on end users, are AT&T's responsibility. Bell Atlantic Tr. 1391 Petition at 2-4; Southwestern Bell Tr. 1391 Petition at 3-5. Petitioners also contend that AT&T's proposed rates for use of shared facilities are unreasonable, and seek delay in the effectiveness of these revisions while facility reconfiguration proceeds.[4]

5. AT&T replies that with respect to the provision of special access, Baseline and Coordinated Service customers are LEC customers rather than AT&T's, notwithstanding that AT&T orders special access on behalf of Coordinated Service customers. Its role in directing a LEC to provide access, AT&T states, is limited to the specification of individual channels on shared facilities after the LEC has determined to use those facilities rather than rely on facilities it directly controls. AT&T contends that it is entitled to compensation for such LEC use of shared high capacity facilities to provide special access. AT&T Tr. 1265 Reply at 7-10; AT&T Tr. 1391 Reply at 4-6. As to the proposed rate levels, AT&T states that its existing Local Channel Service is priced approximately 10 percent above the underlying LEC tariff rates for access service; this increment reflects AT&T's costs of coordination and administration. AT&T states that the rates proposed by AT&T for LEC use of shared facilities were developed consistent with this methodology, and avers that petitioners have submitted no basis for any distinctive rate treatment of their use of such arrangements. AT&T Tr. 1265 Reply at 4-8; AT&T Tr. 1391 Reply at 3-4. Finally, AT&T notes that it began meeting with LECs in January 1988 to explain the impending digital interface requirements and associated compensation arrangements, so that no further delay should be granted to accommodate reconfiguration of LEC access facilities. AT&T Tr. 1265 Reply at 10-11.

6. The Common Carrier Bureau has reviewed AT&T's Transmittal Nos. 1265 and 1391, the several petitions, and the informal submissions filed in response to the August meeting. As modified, we conclude AT&T's proposal is

neither so patently unlawful as to warrant rejection, nor that the contentions of petitioners warrant further investigation.

7. Accordingly, IT IS ORDERED that the petitions to reject or to suspend and investigate AT&T Transmittal No. 1265, filed by the Bell Atlantic Telephone Companies, the BellSouth Telephone Companies, jointly by New England Telephone and Telegraph Company and New York Telephone Company, Southern New England Telephone Company, Southwestern Bell Telephone Company, and Pacific Bell ARE DENIED.

8. IT IS FURTHER ORDERED that the petitions to reject or to suspend and investigate AT&T Transmittal No. 1391, filed by the Bell Atlantic Telephone Companies, the BellSouth Telephone Companies, Pacific Bell, the Southern New England Telephone Company, and Southwestern Bell Telephone Company, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carl D. Lawson
Deputy Chief, Common Carrier Bureau

FOOTNOTES

[1] Petitions were filed against Transmittal No. 1265 by the Bell Atlantic Telephone Companies, the BellSouth Telephone Companies, jointly by New England Telephone and Telegraph Company and New York Telephone Company, Southern New England Telephone Company, Southwestern Bell Telephone Company, and Pacific Bell.

[2] Petitions against Transmittal No. 1391 were filed by Bell Atlantic, BellSouth, Pacific Bell (endorsing BellSouth's petition), SNET, and Southwestern Bell.

[3] AT&T Transmittal No. 1265, Description and Justification (D&J) at 3.

[4] Petitions directed at Transmittal No. 1391 essentially reiterate objections to the original proposal, characterizing the limitation in scope of proposed compensation arrangements to special access as a minor modification. For this reason they are not separately summarized.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-554

In the Matter of

Local Exchange Carrier
Access Tariff Rate Levels

MEMORANDUM OPINION AND ORDER

Adopted: December 30, 1988; Released: December 30, 1988

By the Chief, Common Carrier Bureau:

I. BACKGROUND

1. By its final Order in CC Docket No. 88-326, the Commission modified the proposed effective date of the local exchange carriers' (LECs') Annual 1989 Access Tariff Filings from January 1, 1989, to April 1, 1989, and extended the terminating date of the LECs' current access tariff rates from December 31, 1988, to March 31, 1989. *See* Access Tariff Filing Schedules, 3 FCC Rcd 5495 (1988) (*Tariff Filing Deferral Order*). In that Order, the Commission noted that the LECs remain obligated to maintain their earnings within the authorized rate of return for the entire 15 months that the extended current rates will be in effect and directed this Bureau to make any necessary adjustments if the LECs fail to do so themselves.[1]

2. At the end of November 1988, the Bureau determined that, despite actual reported earnings for the first six months of 1988 well above the authorized level of 12.0 percent,[2] very few of the LECs had initiated any adjustments to retarget their rates. Accordingly, on December 12, 1988, this Bureau released an *Order To Show Cause* directing that, by December 19, 1988, LECs with combined switched traffic sensitive and special access rates of return above 12.25 percent for the first two quarters of 1988 must either file rate reductions which would retarget their rates of return to 12.0 percent or show cause why they should not be ordered to do so. *See* Local Exchange Carrier Access Tariff Rate Levels, CC Docket No. 88-554, DA 88-1869, released Dec. 2, 1988 (*Order To Show Cause*). [3]

3. In the *Order To Show Cause*, we required that any LEC which elects to file an answer must demonstrate that the excessive rate of return for the first two quarters of 1988 is not representative of its probable rate of return for the first quarter of 1989 because there are other factors which are likely to reduce its rate of return for 1989 to an allowable level. We stated that these factors may consist of changes in demand, rates, separations rules, other rules, depreciation rates, or other matters. In addition, we required that these factors must be affirmatively identified in the answer. Finally, we directed that the answering LEC must also project its Form 492 results for the first quarter of 1989. *Id.* at paras. 7-8.

4. We also required that any LEC which elects to file a transmittal must retarget its rate of return to 12.0 percent, effective no later than January 1, 1989, and continuing through March 31, 1989, after which the Annual 1989 Access Tariff Filings as scheduled to become effective. In addition, we stated:

> In order to expedite rate reductions to reduce overall earnings to a reasonable level, we will not initiate an investigation of revised tariffs that achieve that result without a precise retargetting of each element.

Id. at para. 6.

5. Four of the subject LECs filed answers to the *Order To Show Cause* and the others filed transmittals to reduce their rates.[4]

II. DISCUSSION

6. The four LECs filing answers to the *Order To Show Cause* argued that no corrective filing was necessary to ensure earnings at the authorized level. Illinois Consolidated Telephone Company (Illinois) was listed in the *Order To Show Cause* as having a cumulative rate of return for the first two quarters of 1988 of 12.27 percent.[5] It has filed an answer and supporting information indicating an actual cumulative return of 12.01 percent for the third quarter 1988, a projected cumulative return of 11.84 percent for the fourth quarter 1988, and a projected return of 11.00 percent for the first quarter 1989.[6] Illinois attributes this decline to unforeseen changes in demand, changes in certain expenses, and changes resulting from the new Part 32 Uniform System of Accounts. On December 19, 1988, Illinois filed additional information indicating that very recent changes in high-capacity demand have resulted in a decrease in its projected cumulative return for the first quarter of 1989 from 11.0 percent to 10.23 percent.

7. Chillicothe Telephone Company (Chillicothe) was listed in the *Order To Show Cause* as having a cumulative rate of return for the first two quarters of 1988 of 52.36 percent.[7] It has filed an answer indicating that it previously filed Transmittal No. 13 revising its interstate access tariff to lower its rate of return to 11.44 percent for the first quarter of 1989. It states that the excess return in its current rates results from an unduly high rate for the local transport element of its switched access tariff and that it has accordingly reduce rates for that element.[8]

8. Kerman Telephone Company (Kerman) was listed in the *Order To Show Cause* as having a cumulative rate of return for the first two quarters of 1988 of 25.21 percent.[9] It filed an answer indicating that it previously filed Transmittal No. 17 revising its interstate access tariff to lower its rate of return to below 12.0 percent. It states that the reduction has become effective, and it presents tables indicating that its third quarter 1988 cumulative return is below 10.0 percent.[10]

9. Fidelity Telephone Company (Fidelity) was listed in the *Order To Show Cause* as having a cumulative rate of return for the first two quarters of 1988 of 23.75 percent.[11] It filed an answer indicating that recent addi-

tions of fiber optic facilities to its rate base has increased its revenue requirement such that its cumulative rate of return for calendar 1988 is under 9.0 percent.[12]

10. No comments or oppositions were filed against any of the answers of the four LECs just described. We have examined the submissions of each of them and, where appropriate, we have examined the previous tariff transmittals to which they have referred. We find that each of them has sustained its burden to show cause why we should not order it to lower its access rates.

11. The remaining 20 of the 24 subject LECs listed in the *Order To Show Cause* all filed tariff reductions to retarget their rates of return to no more than the maximum allowable 12.0 percent.[13] American Telephone and Telegraph Company (AT&T) filed a petition to investigate the filings of New York Telephone Company (New York), New England Telephone and Telegraph Company (New England), and The Bell Atlantic Telephone Companies (Bell Atlantic).

12. With respect to the transmittals other than the three against which AT&T petitioned, we have reviewed the submissions and find that, with one exception, there are no compelling reasons why any of the proposed tariffs are unlawful so as to require rejection and that investigations or other similar measures are unwarranted. The one exception to this view is Bourbeuse Telephone Company (Bourbeuse), which we discuss *infra* at paragraph 22.

13. AT&T first challenges the relationship between different access service categories in the proposed reductions of New York and New England. New York projects excess earnings for the first quarter of 1989 of $2.5 million from its combined switched traffic sensitive and special access service categories.[14] New York notes, however, that in the first two quarters of 1988, it overearned on switched access and underearned on special access. For this reason, New York states, it is proposing to decrease only its switched access traffic sensitive rates. It adds that this structure will create a "smooth transition" to the rates it intends to implement on April 1, 1989.

14. AT&T's petition asserts that this adjustment is improper because it effects the necessary rate of return reductions through totaled revenues and averaged rates of return for both service categories combined. AT&T argues that the Commission's Rules require New York to effect the adjustments for each of the two categories separately, without any offsets of excesses and deficiencies between them. AT&T then recomputes New York's necessary decrease, treating service categories separately, for an additional reduction of $5.8 million to switched access rates.[15]

15. New England's proposed reduction raises similar issues of offsetting service categories. New England's projected first quarter 1989 excess earnings arise from both service categories.[16] Its returns for the first two quarters of 1988 were higher for special access than switched access, and it intends to implement lower special access rates on April 1, 1989. Accordingly, it proposes to adjust its special access rates, leaving switched traffic sensitive access rates unchanged.[17] Here too, AT&T maintains that the reductions should be reflected individually in each service category.

16. We reject AT&T's argument. As we stated in the *Order To Show Cause*, we will not require a precise retargetting of each element because we wish to expedite implementation of the rate reductions proposed in the tariff transmittals. The same principle applies equally to precise retargetting of service categories. Accordingly, we deny AT&T's petition on this issue.

17. AT&T's petition also challenges Bell Atlantic's proposed reduction. The *Order To Show Cause* listed Bell Atlantic as having a cumulative rate of return in the first two quarters of 1988 of 14.20 percent, attributable to switched traffic sensitive access service.[18] In its Transmittal No. 24, Bell Atlantic states that, based on its data for the first three quarters of 1988, it must decrease its switched traffic sensitive access rates for the first quarter of 1989 by $26.6 million, or 3 percent, to bring its rate of return into compliance with the maximum allowable rate of 12.0 percent.[19]

18. Bell Atlantic further states that the projections and the rate reductions set forth in its transmittal are essentially the same as what it will submit on December 30, 1988 in its Annual 1989 Access Tariff Filing. It claims, however, that time constraints have limited the development of full Section 61.38 cost support and that it is therefore relying on a partial waiver of those requirements for this proceeding, which it obtained previously.[20]

19. AT&T's petition argues that Bell Atlantic has failed to provide any evidence that its proposed reductions will in fact bring its rate of return into compliance with the 12.0 percent maximum.[21] Moreover, AT&T maintains that the information in Bell Atlantic's Form 492 for the first two quarters of 1988, which is the only evidence currently available, indicates that Bell Atlantic would have to decrease its switched traffic sensitive rates by $84.2 million, rather than the $26.6 million which Bell Atlantic has proposed, in order to comply with the *Order To Show Cause*. Accordingly, AT&T requests that we institute an investigation of Bell Atlantic's filing.[22]

20. We have examined Bell Atlantic's filing, AT&T's petition, and data otherwise publically available to us. On the basis of this examination, we conclude that Bell Atlantic's reductions may indeed be insufficient. While Bell Atlantic submits information concerning calculations of revenue reductions, and thus the percentage reductions in rates, it has failed to provide any showing that these particular revenue reductions will in fact be sufficient to reduce its rate of return to the allowable 12.0 percent. Recognizing that Bell Atlantic received a partial waiver of the Section 61.38 cost support requirements, it is still bound to demonstrate that its proposed decreases are in compliance with our rate of return requirements.

21. AT&T does not request that we reject or suspend Bell Atlantic's proposed decrease, nor do we think we should. The instant proceeding is by its nature limited and expedited. Moreover, the evidence which Bell Atlantic claims will support its reduction will soon be before us in the normal tariff review process of the Annual 1989 Access Tariff Filing.

22. Finally, we have reviewed the filing of Bourbeuse, and we find that it raises the same questions as Bell Atlantic's does. Accordingly, pursuant to Section 204(b) of the Communications Act, 47 U.S.C. § 204(b), we allow the proposed reductions of Bell Atlantic and Bourbeuse to take effect on a temporary basis, pending further order in the ensuing annual access filing. We also impose on Bell Atlantic and Bourbeuse accounting orders as provided in Section 204(b) of the Act, 47 U.S.C. 204(b).

III. ORDERING CLAUSES

23. Accordingly, IT IS ORDERED that the petition against the transmittals listed herein filed by American Telephone and Telegraph Company ARE GRANTED to the extent indicated herein and otherwise ARE DENIED.

24. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the tariff revisions filed by The Bell Atlantic Telephone Companies and Bourbeuse Telephone Company ARE SUSPENDED for one day.

25. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 204(a) and 204(b) of the Communications Act, 47 U.S.C. §§ 154(i), 204(a), and 204(b), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, The Bell Atlantic Telephone Companies and Bourbeuse Telephone Company shall keep accurate account of all amounts received pursuant to the revised rates which are the subject of this proceeding.

26. IT IS FURTHER ORDERED that The Bell Atlantic Telephone Companies and Bourbeuse Telephone Company shall file a supplement reflecting the suspension within 7 days of the release of this Order. For this purpose, we assign Special Permission No. 88-669 and waive 47 C.F.R. §§ 61.58 and 61.59.

27. IT IS FURTHER ORDERED that this Order is effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

APPENDIX A

United Telephone Operating Companies	Tr. No 213
The Bell Atlantic Telephone Companies	Tr. No.284
Contel Telephone Companies	Tr. No. 9
Rochester Telephone Corparation	Tr. No. 100
Southwestern Bell Telephone Company	Tr. No. 1747
The Lincoln Telephone and Telegraph Company	Tr. No. 31
New England Telephone and Telegraph Company	Tr. No. 961
New York Telephone Company	Tr. No. 948
Telephone Utilities Exchange Carrier Association	Tr. No. 81
GVNW Inc./Management Bourbeuse Telephone Company Leaf River Telephone Company Midland Telephone Company El Paso Telephone Company Inland Telephone Company	Tr. No. 21
Lakeside Telephone Company East Ascension Telephone Company Plains Cooperative Telephone Association Lajicarita Rural Telephone Cooperative	
GVNW Inc./Management Union Telephone Company	Tr. No. 18
Citizens Telephone Company	Tr. No. 36
Walnut Hill Telephone Company	Tr. No. 36

FOOTNOTES

[1] *Tariff Filing Deferral Order*, 3 FCC Rcd at 5496.

[2] *See* Section 65.700 of the Commission's Rules, 47 C.F.R. § 65.700.

[3] The 24 LECs subject to this requirement were listed in Appendices A and B of the *Order To Show Cause* and are likewise listed in Appendix A of the instant Order. They include seven holding companies having at least one Tier 1 operating company. The *Order To Show Cause* noted that five operating companies (which were not on the list) had already filed appropriate rate reductions. We subsequently released an erratum listing two additional operating companies which had filed such reductions. *See* Local Exchange Carrier Access Rate Levels, *Erratum*, CC Docket 88-554, DA 88-1988, released Dec. 21, 1988.

[4] *See* Appendix A to the instant Order, listing these filing LECs and their respective tariff transmittal numbers.

[5] *Order To Show Cause* at Appendices A and B.

[6] Illinois Answer at 1-3.

[7] *Order To Show Cause* at Appendices A and B.

[8] Chillicothe Answer, *passim*.

[9] *Order To Show Cause* at Appendices A and B.

[10] Kerman Answer, *passim*. Kerman's answer was filed through GVNW Inc./Management (GVNW), a consulting firm.

[11] *Order To Show Cause* at Appendices A and B.

[12] Fidelity Answer, *passim*. Fidelity filed its answer through GVNW.

[13] *See* Appendix A.

[14] New York Tr. 948, Description and Justification (D&J) at 1-2.

[15] AT&T Petition at 3-4.

[16] *Order To Show Cause* at Appendices A and B.

[17] New England Tr. 961, D&J at 1-2.

[18] *Order To Show Cause* at Appendices A and B.

[19] *Id.*

[20] Bell Atlantic Tr.284, D&J at 1-2.

[21] AT&T Petition at 4-5.

[22] *Id.*

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

COMMUNICATIONS SATELLITE CORPORATION
Revisions to Tariff F.C.C. No. 103

Transmittal No. 712

ORDER

Adopted: January 6, 1989; Released: January 6, 1989

By the Chief, Common Carrier Bureau:

1. The above-captioned tariff revisions were filed by the Communications Satellite Corporation (Comsat) on November 3, 1988, and are scheduled to become effective on January 17, 1989. Pan American Satellite (PanAmSat) filed a petition to suspend and investigate the revisions, and Comsat replied.

2. The Comsat filing proposes contract video offerings in the Atlantic and Pacific Ocean Regions that complement Comsat's existing services while using non-standard capacity. The proposed Atlantic offering makes available at a discount a transponder that is reserved primarily for TAT-8 fiber optic cable restoration. The proposed Pacific offering makes available at a discount a transponder that is on an inclined-orbit satellite. The transmittal is accompanied by an agreement between Comsat and MCI Telecommunications Corporation for use of these offerings. PanAmSat objects that Comsat's cost support showing is inadequate to justify this transmittal.

3. The Common Carrier Bureau has reviewed Comsat's proposed tariff revision and the pleadings. We find that no compelling argument has been presented that the proposed tariff revisions are so patently unlawful as to require rejection, and that an investigation of the revisions is not warranted at this time.

4. Accordingly, IT IS ORDERED that the petition to reject or in the alternative to suspend and investigate filed by Pan American Satellite against Communications Satellite Corporation Tariff F.C.C. No. 103, Transmittal No. 712, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-144

In the Matter of

Review of Technical Parameters for
FM Allocation Rules of Part 73,
Subpart B, FM Broadcast Stations

ORDER

Adopted: December 22, 1988; Released: January 18, 1989

By the Commission:

1. This action originates in an earlier Commission decision in Docket 86-144,[1] which changed the minimum power requirements for Class A commercial radio broadcast facilities and, accordingly amended Section 73.211 of the Commission's Rules. Correspondingly, Section 73.511 of the noncommercial FM radio rules should have been revised at the same time because the definition of a class A station is the same whether the station is commercial or noncommercial. However, revision of Section 73.511 was inadvertently omitted in the earlier decision. This *Order* corrects that oversight, and pursuant to the Agency's oversight function, Section 73.511 is amended accordingly.

2. This *Order* makes no substantive changes which impose additional burdens or remove provisions relied upon by licensees or the public and, accordingly, we conclude, for the reasons set forth above, that this revision will serve the public interest.

3. Because this amendment does not impose any additional burdens, and raises no issue upon which public comment would serve a meaningful purpose, good cause exists for dispensing with the notice, comment, and effective date provisions contained in the Administrative Procedure Act. *See* 5 U.S.C. §§ 553 (b) and (d).

4. Because a general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

5. The amendment contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

6. Therefore, IT IS ORDERED, That pursuant to Sections 4 and 303 of the Communications Act of 1934, as amended, (47 U.S.C. §§ 154 and 303) Part 73 of the FCC Rules and Regulations IS HEREBY AMENDED as set forth below, effective upon publication in the *Federal Register*.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

47 CFR Part 73 is amended as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. Sections 154 and 303.

2. Section 73.511 is amended by revising paragraph (a) to read as follows:

§ 73.511 Power and antenna height requirements.

(a) No new noncommercial educational station will be authorized with less power than minimum power requirements for commercial Class A facilities. (*See* Section 73.211.)

* * * * *

FOOTNOTE

[1] *See Memorandum Opinion and Order* in MM Docket No. 86-144, FCC 88-152, 3 FCC Rcd 2477 (1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 85-166
Phase I

In the Matter of

Investigation of Special Access
Tariffs of Local Exchange Carriers

MEMORANDUM OPINION AND ORDER

Adopted: January 6, 1989; Released: January 18, 1989

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. By this Order, we direct American Telephone and Telegraph Company (AT&T) and the Bell Operating Companies (BOCs) to file copies of all Shared Network Facilities Agreements (SNFAs) negotiated between AT&T and the BOCs pursuant to the Plan of Reorganization approved by the Court in *United States v. American Telephone and Telegraph Company*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983). In addition, this Order outlines our proposed framework for analyzing the terms of the SNFAs in compliance with the mandate of the Court in *MCI Telecommunications Corp. v. FCC*, 842 F.2d 1296 (D.C. Cir. 1988) (*Remand Order*). Finally, we propose a schedule for filing supplemental direct cases and other submissions in the captioned proceeding. As we explain more fully below, we will consider carefully arguments that submission of some portion of the SNFAs will be sufficient to the task before us.

II. BACKGROUND

2. By an Order released May 24, 1985, this Bureau designated for investigation in this proceeding two issues concerning SNFAs: first, whether the facilities provided under SNFAs constitute special access service; and second, whether the BOCs' special access tariffs unlawfully discriminate against interexchange carriers that cannot obtain facilities pursuant to SNFAs.[1] In a subsequent Order, the Commission concluded "that SNFAs are reasonable under the Communications Act because they further the public interest."[2] The Commission reasoned that the existence of SNFAs and special access did not appear to constitute the unlawful provision of like services because it found that the record indicated that differences between the charges, terms, and conditions governing SNFAs and those governing special access are justifiable and reasonable.[3]

3. In the *Remand Order* the Court remanded the *SNFA Order* for further consideration of the issue of whether the special access tariffs unlawfully discriminate against carriers that cannot obtain SNFAs. In its decision, the Court outlined a three-stage inquiry which it concluded is essential to ascertain whether unreasonable discrimination exists. The Court stated that

> [f]irst, the FCC must determine, generally, whether some or all facilities available to AT&T under the SNFAs are "like" facilities that are used to provide special access services. Where the facilities are alike, the FCC must devise some reasonable mechanism to assess amounts paid under the two pricing schemes to determine whether some tariffs are discriminatory by comparison with their SNFA counterparts. Finally, if discrimination exists, the FCC must decide whether it is just and reasonable.

842 F.2d at 1307. The Court noted that, in order to perform this analysis, the Commission must obtain copies of the SNFAs or a reasonable sampling of them and lists of charges paid by AT&T pursuant to the agreements. Finally, the Court left to the Commission the task of designing an appropriate procedure to ensure that interexchange carriers other than AT&T are not being forced to pay unjustly or unreasonably discriminatory rates. *Id.*

III. DISCUSSION

4. As we noted at the outset, the purpose of this Order is to establish both a framework for the next stage of this investigation and a schedule for the filing of further submissions in this proceeding.

A. Proposed Analysis

5. We conclude that, in order to respond to the Court's mandate, we must direct AT&T and the BOCs to file copies of all SNFAs -- regardless of whether the SNFA pertains to the lease of facilities from a BOC to AT&T or to a lease of facilities from AT&T to a BOC. Although the Court stated that we could require the parties to file a reasonable sampling of the SNFAs in response to its remand, it is not altogether clear that we could design a methodology that would produce a reasonably representative sample of the SNFAs. This is so because it is not obvious what characteristics, if any, would make a SNFA "representative" of all SNFAs. We will allow AT&T and the BOCs five months from the release of this Order to submit copies of all SNFAs.[4]

6. We are open to argument that the filing of all SNFAs is not the only practical way to proceed. Accordingly, we will entertain alternatives to this approach, including detailed explanations of any statistical sampling methodology that parties may believe is appropriate and would yield a representative sampling of SNFAs. In addition, it is our understanding that substantial portions of each of the approximately 17,000 SNFAs are identical. Any proposed alternatives should therefore address the reasonableness of permitting AT&T and the BOCs to file only those portions of each SNFA that set out unique terms of the particular agreement.[5]

7. We wish to emphasize that we do not anticipate granting confidential treatment to these submissions. We believe that a full and fair resolution of the issues remanded by the Court requires that the SNFAs be made publicly available and that the Commission have the benefit of the parties' analysis of the material to be filed

in resolving the issues before it. Obviously, if we were to withhold disclosure of these materials, it would be impossible for parties to give the Commission an informed analysis of their contents. Moreover, to the extent that a substantial portion of the SNFAs have now expired, the competitive sensitivity of these documents is, in our view, greatly lessened.[6]

8. Contemporaneously with the filing of the SNFAs (or, alternatively, of such portions of SNFAs as we may by subsequent Order require AT&T and the BOCs to file), we direct AT&T and the BOCs to file supplements to their direct cases in this investigation. These submissions should, obviously, present the parties' justification of the special access tariffs under investigation in light of the SNFAs. In particular, we call the parties' attention to the Court's directive to the Commission to determine whether the facilities available to AT&T under the SNFAs are "like" facilities that are used to provide special access service; to assess whether the rates paid under the special access tariffs are discriminatory by comparison with the SNFAs; and, finally, to determine whether any discrimination that may exist is just and reasonable. We would also expect these submissions to address whether the leases of SNFA facilities from AT&T to the BOCs affect the justness and reasonableness of the special access rates charged by the BOCs.[8] We also believe that discussion of the contrast between the shared nature of SNFA facilities, as compared to the dedicated nature of special access facilities, might prove to be relevant to the Commission's resolution of the pending investigation.

B. Filing Requirements

9. Interested parties may file proposed alternatives to the procedures established by this Order (as discussed in para. 6, *supra)* not later than February 14, 1989. Comments concerning these proposals should be filed not later than March 1, 1989. We emphasize that, although we are willing to consider alternative approaches, AT&T and the BOCs should be prepared to comply with the requirements of this Order unless different requirements are established by subsequent Order.

10. Due to the volume of material that AT&T and the BOCs will be required to file, we direct AT&T and the BOCs to file the SNFAs not later than June 13, 1989. In view of the fact that we are allowing the parties a substantial amount of time to file the SNFAs, however, we conclude that AT&T and the BOCs also should file their supplemental direct cases at the same time they file the SNFAs. The material on which the direct cases must be based is already available to AT&T and the BOCs. We therefore conclude that this schedule should not present any substantial problems for AT&T and the BOCs. In contrast, we believe that parties filing oppositions to the supplemental direct cases should be given a generous period of time in which to review the material that AT&T and the BOCs will file and to prepare their analyses of this material. Therefore, oppositions shall be filed not later than September 13, 1989. Finally, rebuttals will be due not later than October 13, 1989. It is our intention to act expeditiously, after the completion of this pleading cycle, to resolve the issues remanded to the Commission by the Court.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that American Telephone and Telegraph Company and the Bell Operating Companies SHALL FILE all Shared Network Facilities Agreements as required by the terms of this Order not later than **June 13, 1989.**

12. IT IS FURTHER ORDERED that American Telephone and Telegraph Company and the Bell Operating Companies SHALL FILE supplements to their direct cases in the above-captioned proceeding not later than **June 13, 1989.**

13. IT IS FURTHER ORDERED that parties filing comments in response to this Order SHALL FILE one copy of their comments with the Commission's contractor for public records duplication, International Transcription Services, Inc., Room 246, 1919 M St., N.W. Washington, D.C. 20554. Commenters shall also serve all parties of record in the above-captioned proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Mimeo No. 4726, released May 24, 1985 (*Designation Order)* at para. 18.

[2] Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase I, FCC 86-52, released Jan. 24, 1986 (*SNFA Order)* at para. 54.

[3] *Id.* at paras. 54-55.

[4] Obviously, both AT&T and the relevant BOC should have copies of all SNFAs that affect them. It is not necessary for each party to file a copy. We leave it to the parties to devise some mutually satisfactory arrangement for distributing the cost of filing the SNFAs.

[5] Such unique portions would presumably include, *inter alia*, language identifying the particular facilities in question and the charges for leasing the facilities. Proposals should identify any other provisions that must be filed to permit the Commission to resolve the issues before it. AT&T and each BOC should also provide an estimate of the cubic feet of materials it would expect to file under our procedure or under any proposed alternative procedure.

[6] At an earlier stage of this proceeding we concluded that some of the SNFAs submitted to the Commission were entitled to confidential treatment pursuant to Sections 0.457 and 0.459 of the Commission's Rules, 47 C.F.R. §§ 0.457, 0.459. *See* letter from Chief, Common Carrier Bureau, FCC, to J. Scorce, MCI Telecommunications Corp., Jan. 2, 1985. As we stated at that time, the above-cited rules allow persons submitting information to request confidential treatment of such information. In order to prevail in a request for confidential treatment, the submitter must demonstrate by a preponderance of the evidence that non-disclosure is consistent with the provisions of the Freedom of Information Act, 5 U.S.C. § 552. Even if submitted information is competitively sensitive, its disclosure is a matter of administrative discretion and the Commission may determine that an overriding public interest, when balanced against the

risk of injury to the submitter, warrants release of confidential information. *See* Chrysler Corp. v. Brown, 441 U.S. 281, 290-94 (1979); 47 C.F.R. § 0.461(f)(4). In the wake of the remand of the *SNFA Order*, we believe that it is now unlikely that AT&T and the BOCs will be able to demonstrate that non-disclosure is justified.

[7] In the *Designation Order* we directed AT&T to file a direct case addressing the SNFA issues designated for investigation. This procedure was, of course, somewhat unusual in view of the fact that no tariffed offering of AT&T was subject to the investigation. Nevertheless, because AT&T is inextricably involved in the issues presented by the remand, we direct AT&T to file a supplement to its direct case.

[8] Such discussion should include a comparison of the charges paid by the BOCs to AT&T under the SNFAs with rates for any comparable tariffed offerings of AT&T. Although an empirical analysis may be difficult to perform, we believe that it is possible that, to the extent AT&T is assessed favorable charges for SNFA facilities that it leases from the BOCs, the BOCs receive similarly favorable terms from AT&T.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

UNITED AIR LINES, INC.,
Complainant,

v. File No. E-87-55

AMERICAN TELEPHONE
AND TELEGRAPH COMPANY,
Defendant.

ORDER

Adopted: January 4, 1989; Released January 18, 1989

By the Chief, Enforcement Division, Common Carrier Bureau:

1. We have before us a joint motion filed on November 28, 1988, by United Air Lines, Inc. (United) and American Telephone and Telegraph Company (AT&T), requesting that we dismiss with prejudice the above-captioned proceeding and authorize the parties' agreement to settle all issues raised in the matter. For the reasons set forth below, the joint motion is granted.

2. This proceeding was initiated by a formal complaint filed by United against AT&T on April 23, 1987, alleging that AT&T's rates for 56 kilobits per second (kbps) Data Digital Service (DDS) were unjust and unreasonable within the meaning of Section 201(b) of the Communications Act, 47 U.S.C. § 201(b). AT&T denied the allegations and moved to dismiss the complaint. On April 13, 1988, the Common Carrier Bureau (Bureau) released an order in the proceeding in which it granted AT&T's motion to dismiss in part and denied it in part. *Aetna Life Insurance Company et al. v. AT&T*, DA-88-462 (released April 13, 1988). Subsequently, the parties entered into settlement negotiations with the cooperation of the Enforcement Division. As a result of these negotiations, the parties reached a settlement that resolves the matters in controversy.

3. On the basis of the statements contained in the parties' joint motion, we conclude that there are no longer issues in controversy and the proceeding should be terminated.

4. Accordingly, IT IS ORDERED, pursuant to authority delegated in Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that the Joint Motion to Authorize Settlement and Dismiss Complaint filed by United Air Lines, Inc. and American Telephone and Telegraph Company IS GRANTED.

5. IT IS FURTHER ORDERED that the above-captioned complaint IS DISMISSED WITH PREJUDICE.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 87-570

In the Matter of

Amendment of Part 1 of the
Commission's Rules and Regulations
Regarding Implementation of the
Debt Collection Act of 1982 and
Related Statutory Provisions

ERRATUM

Released: January 18, 1989

On December 23, 1988, the Commission released a *Report and Order*, FCC 88-350, concerning the above-captioned proceeding. The first paragraph of the Appendix of the *Report and Order* mistakenly refers to a new Subpart N instead of a new Subpart O. Accordingly, the following corrections are made to the first paragraph of the Appendix:

Part 1 -- [AMENDED]

Part 1 [Practice and Procedure] of Chapter 1 of Title 47 of the Code of Federal Regulations is amended by adding a new Subpart O as follows:

1. The authority for Subpart O is as follows:

Authority: 47 U.S.C. §§ 154(i), 303(r); 31 U.S.C. §§ 3701, 3711, 3716-3719, 3720A; 5 U.S.C. § 5514; 4 C.F.R. Parts 101-105; 5 C.F.R. Part 550.

2. Subpart O is added to read as follows:

SUBPART O - COLLECTION OF CLAIMS OWED THE UNITED STATES[1]

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTE

[1] The version of the rules that is published in the Federal Register will incorporate the above corrections.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

SOUTHWESTERN BELL MOBILE SYSTEMS, INC.,
Complainant,

v. File No. E-87-149

WEST TEXAS CELLULAR TELEPHONE COMPANY,
Defendant.

ORDER

Adopted: January 5, 1989; Released: January 18, 1989

By the Chief, Enforcement Division, Common Carrier Bureau:

1. We have before us a joint motion filed on November 28, 1988, by Southwestern Bell Mobile Systems, Inc. (SWB) and Amarillo CellTelCo (Amarillo)[1] requesting that we dismiss with prejudice the above-captioned proceeding and authorize the parties' agreement which settled the matters raised in the complaint. For the reasons set forth below, the joint motion is granted.

2. This proceeding was initiated on August 18, 1987, when SWB filed a formal complaint and emergency petition for special relief alleging that Amarillo refused to allow it an opportunity to resell Amarillo's cellular service until SWB's system was operational in violation of a condition of Amarillo's service authorization. Additionally, SWB alleged that Amarillo was operating its system in excess of its authorized power level, which was interfering with SWB's system when it subsequently became operational. Amarillo filed a cross complaint alleging that SWB has refused to enter into a reasonable roamer agreement which would allow for mutual automatic roaming. Subsequently, the parties entered into settlement negotiations with the cooperation of the Enforcement Division. As a result of these negotiations, the parties reached a settlement that resolves all matters in controversy.

3. SWB and Amarillo represent that their agreement resolves all claims alleged in the complaint, petition for special relief, and cross complaint in a manner acceptable to both parties. The parties state that grant of their joint motion will terminate the proceeding in a manner satisfactory to both and conserve the time and resources of the parties and the Commission. On the basis of the statements contained in the parties' motion, we conclude that there are no longer issues in controversy and the proceeding should be terminated.

4. Accordingly, IT IS ORDERED, pursuant to authority delegated in 47 C.F.R. § 0.291, that the Joint Motion to Dismiss filed by Southwestern Bell Mobile Systems and Amarillo CellTelCo IS GRANTED.

5. IT IS FURTHER ORDERED that the above-captioned complaint and the included petition for emergency relief and cross complaint ARE DISMISSED WITH PREJUDICE.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Enforcement Division
Common Carrier Bureau

FOOTNOTE

[1] Amarillo CellTelCo is the proper name of the licensee named as defendant in this proceeding.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-591

In the Matter of

Amendment of Section 73.202(b), RM-6467
Table of Allotments,
FM Broadcast Stations.
(Fruithurst, Alabama)

NOTICE OF PROPOSED RULE MAKING

Adopted: November 30, 1988; Released: January 19, 1989

By the Deputy Chief, Policy and Rules Division:

1. A petition for rule making has been filed by Steven L. Gradick (petitioner) proposing the allotment of Channel 274A to Fruithurst, Alabama, as that community's first local broadcast service. Petitioner stated his intention to apply for the channel if allotted.

2. A staff engineering analysis has determined that Channel 274A can be allotted to Fruithurst in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, provided the transmitter is sited at least 2.9 kilometers (1.8 miles) west[1] to avoid short-spacing to Station WNKS(FM), Channel 275C, Columbus, Georgia,[2] as well as Station WVEE(FM), Channel 277C, Atlanta, Georgia.[3]

3. In view of the fact that Fruithurst could receive a first local broadcast service, the Commission believes it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to that community, as follows:

	Channel No.	
City	Present	Proposed
Fruithurst, Alabama	--	274A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 13, 1989,** and reply comments on or before **March 28, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows:

Steven L. Gradick
P.O. Box 32
12 First Avenue West
Fruithurst, AL 36262

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It

should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Reference coordinates at the restricted site for Channel 274A are 33-43-57 and 85-28-06.

[2] Reference coordinates at the licensed site of Station WNKS(FM) are 32-19-25 and 84-46-46.

[3] Reference coordinates at the licensed site of Station WVEE(FM) are 33-45-35 and 84-20-07.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-592

In the Matter of

Amendment of Section 73.202(b), RM-6491
Table of Allotments,
FM Broadcast Stations.
(Dunsmuir, California)

NOTICE OF PROPOSED RULE MAKING

Adopted: November 30, 1988; Released: January 19, 1989

By the Deputy Chief, Policy and Rules Division:

1. A petition for rule making has been filed on behalf of Jay Stevens (petitioner) proposing the allotment of FM Channel 297A to Dunsmuir, California, as that community's first local broadcast service. Petitioner stated his intention to apply for the channel if allotted.

2. Channel 297A conflicts with an alternate proposal in MM Docket No. 88-28 as it pertains to Mt. Shasta, Ca. Therefore, in an effort to accommodate petitioner's proposal, we sought an alternate channel and have determined that Channel 261A can be allotted to Dunsmuir in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules.[1]

3. In view of the fact that Dunsmuir could receive a first local broadcast service, the Commission believes it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to that community, as follows:

	Channel No.	
City	Present	Proposed
Dunsmuir, California	--	261A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 13, 1989,** and reply comments on or before **March 28, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

William L. Zawila, Esq.
12550 Brookhurst St., Suite A
Garden Grove, CA 92640

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the

channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Coordinates utilized for this determination are those of the city reference point at 41-12-30 and 122-16-18.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-593

In the Matter of

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Wetumpka, Alabama) — RM-6490

NOTICE OF PROPOSED RULE MAKING

Adopted: November 30, 1988; Released: January 19, 1989

By the Deputy Chief, Policy and Rules Division:

1. William B. Grant (petitioner) has filed a petition for rule making proposing the allotment of Channel 282A to Wetumpka, Alabama, as that community's first local FM service. Petitioner states his intention to apply for the channel if allotted.

2. A staff engineering analysis has determined that Channel 282A can be allotted to Wetumpka, Alabama, in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, provided the transmitter is sited at least 8.3 kilometers (5.2 miles) north[1] to negate a short-spacing to an application (BPH-880224MR) for Channel 282A at Brantley, Alabama.[2]

3. In view of the fact that Wetumpka could receive a first local FM service, the Commission believes it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to that community, as follows:

	Channel No.	
City	Present	Proposed
Wetumpka, Alabama	–	282A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 13, 1989,** and reply comments on or before **March 28, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner as follows:

William B. Grant
Route 1 Box 400B
York, AL 39625

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Reference coordinates at the restricted site are 32-36-46 and 86-11-58.

[2] Reference coordinates at the application site for Channel 282A at Brantley are 31-39-58 and 86-13-43.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-594

In the Matter of

Amendment of Section 73.202(b), RM-6394
Table of Allotments,
FM Broadcast Stations.
(Othello, Washington)

NOTICE OF PROPOSED RULE MAKING

Adopted: November 30, 1988; Released: January 19, 1989

By the Deputy Chief, Policy and Rules Division:

1. At the request of P-N-P Broadcasting, Inc. (petitioner), permittee for Channel 249A at Othello, Washington, the Commission considers herein a petition for rule making seeking the substitution of Channel 248C2 for Channel 249A and modification of its construction permit to specify operation on the higher class channel. Petitioner submitted information in support of its proposal to provide Othello with its first wide coverage area FM broadcast station.

2. The substitution can be made consistent with the Commission's minimum separation requirements.[1] Othello is located within 320 kilometers (200 miles) of the U.S.-Canadian border. Therefore, Canadian concurrence must be obtained for the proposal.

3. As requested, we shall propose to modify the construction permit for Channel 249A at Othello, Washington, to specify operation on Channel 248C2. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest nor require that the petitioner demonstrate the availability of an additional equivalent channel at Othello.

4. Accordingly, in order to provide Othello with its first wide coverage area FM service, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Othello, Washington	249A	248C2

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **March 13, 1989,** and reply comments on or before **March 28, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Duane J. Polich
President
P-N-P Broadcasting, Inc.
9235 N.E. 175th
Bothell, WA 98011
(Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The reference coordinates are 46-49-36 and 119-10-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-595

In the Matter of

Amendment of Section 73.606(b), RM-6433
Table of Allotments,
TV Broadcast Stations.
(Casper and Sheridan, Wyoming)

NOTICE OF PROPOSED RULE MAKING

Adopted: November 30, 1988; Released: January 19, 1989

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule making filed by Jessica Longston (petitioner), proposing the reallotment of of vacant and unapplied for VHF Television Channel 9 to Casper, Wyoming, from Sheridan, Wyoming. Petitioner also requests the deletion of vacant and unapplied for VHF TV Channel 13 from Casper.[1] Petitioner submitted information in support of its proposal and states her intention to apply for Channel 9, if allotted to Casper.

2. Casper (population 51,016)[2], seat of Natrona County (population 71,856), is located in eastern Wyoming. Sheridan (population 15,146) is located in northern Wyoming.

3. Petitioner contends that the use of Channel 13 at Casper is impractical because of the uncertainty of available sites. Petitioner argues that since no party has applied for Channel 13 at Casper it should be deleted.

4. Our engineering analysis has determined that Channel 9 can be reallotted to Casper from Sheridan in compliance with Section 73.610 of the Commission's Rules with a site restriction. A site restriction of 23.7 kilometers (14.7 miles) southwest of the community is required in order to avoid short spacings to Station KUSA-TV, Channel 9, Denver, Colorado and Station KBHE-TV, Channel 9, Rapid City, South Dakota. [3] We find that the deletion of Channel 13 from Casper is not required in order to accomplish the allotment of Channel 9 to Casper. Therefore, based on the Commission's policy of not deleting a channel from a community without a proposed replacement or reallotment to another community we shall not entertain the proposed deletion of Channel 13 from Casper.

5. It should be noted that although the Commission recently imposed a freeze on television allotments, or applications therefor, in certain metropolitan areas,[4] Casper and Sheridan are not affected thereby since they are not within the prohibited co-channel distance to any of the specified areas.[5]

6. In view of the above, we believe the public interest would be served by proposing the reallotment of VHF television Channel 9+ to Casper, Wyoming from Sheridan, Wyoming. The proposal could provide Casper with its fifth commerical television service. Accordingly, we shall seek comments on the proposal to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the communities listed below, as follows:

City	Channel No. Present	Proposed
Casper, Wyoming	2+, *6+, 13+, 14-, 20-	2+, *6+, 9+, 13+, 14-, 20-
Sheridan, Wyoming	7, 9+, 12+	7, 12+

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before **March 13, 1989,** and reply comments on or before **March 28, 1989** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Richard R. Zaragoza, Esquire
Fisher, Wayland, Cooper & Leader
1255 23rd Street, N.W.
Suite 800
Washington, D. C. 20037
(Counsel for petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the TV Table of Allotments, Section 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Both channels have remained vacant and unapplied for since their inception in 1986. *See Sheridan and Casper, Wyoming,* 51 FR 23420, June 27, 1986.

[2] Population figures are taken from the 1980 U.S. Census.

[3] The restricted site coordinates are 42-44-33 and 106-33-58.

[4] *See Order,* 52 FR 28346, July 29, 1987, freezing the filing of construction permit applications for vacant VHF television channels in affected metropolitan areas.

[5] *See* Section 73.610 of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-195

In the Matter of

Amendment of Section 73.202(b), RM-5810
Table of Allotments,
FM Broadcast Stations.
(Onawa, Iowa, and Vermillion,
South Dakota)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 29, 1988; Released: January 19, 1989

By the Deputy Chief, Policy and Rules Division:

1. At the request of Barnco (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 3 FCC Rcd 2792 (1988), proposing the substitution of Channel 272C1 for Channel 272A at Onawa, Iowa, and the modification of its construction permit for Station KOOO to specify operation on the higher powered channel. In addition, an *Order to Show Cause* was directed to Vermillion Radio, Inc. (Vermillion Radio), licensee of Station KVRF, Vermillion, South Dakota, as to why its license should not be modified to specify operation on Channel 292A in lieu of its present Channel 272A. Petitioner and Vermillion Radio filed comments.

2. Petitioner supports the allotment of Channel 272C1 to Onawa and the modification of its construction permit, as proposed. In addition, it incorporates by reference its statement of willingness to reimburse Vermillion Radio for the reasonable expenses incurred as a result of modifying its facilities to Channel 292A.

3. Vermillion Radio opposes allotment of the higher powered channel to Onawa and the modification of Station KVRF's license. It argues that a Class A station with 3,000 watts can adequately serve Onawa, with its population of 3,154 persons. Vermillion Radio further contends that the purpose of seeking a Class C1 allotment is not to better serve Onawa but to enable the station to serve the nearby larger community of Sioux City, Iowa. It also opposes the modification of Station KVRF's license. Vermillion Radio states that it has secured financing based on the station continuing to operate on Channel 272A until April 1, 1990, when its license is due for renewal, and that the financing may be withdrawn if it is forced to change channel prior to that date. Further, it submits that the actual impact of the change in channel and what constitutes fair reimbursement cannot be determined without an independent impact study which takes into account loss of listenership and loss of advertising revenue caused by listener confusion. This listener confusion will be heightened if Station KOOO is modified to Channel 272C1, according to Vermillion Radio, because the signals of the two stations will now overlap. Therefore, it believes that Station KVRF should not be forced to change its frequency with reimbursement based only on the physical cost of the change.

4. Based on the record before us, we believe the public interest would be served by substituting Channel 272C1 for Channel 272A at Onawa, Iowa, and substituting Channel 292A for Channel 272A at Vermillion, South Dakota, since it could enable Station KOOO to expand its coverage area. We also find that Vermillion Radio has not raised a substantial and material question of fact which would require a hearing on the modification of its license to specify Channel 292A. Petitioner has stated its willingness to reimburse Vermillion Radio for the reasonable costs associated with the change of channel. The reimbursement of expenses, which is not limited solely to the cost of equipment changes, is governed by the guidelines set forth in *Circleville, Ohio*, 8 FCC 2d 159 (1967). It is expected that petitioner and Vermillion Radio will negotiate in good faith as to the extent of reimbursement to which Vermillion Radio is entitled. As to Vermillion Radio's argument that it should not be forced to change channel prior to the expiration of its license, the Commission has held that the substitution of an existing station's channel at one community serves the public interest where the substitution permits the provision of a new or expanded service at another community. *See, e.g., Marietta, Ohio, and Ravenswood, WV*, 2 FCC Rcd 4681 (1987), *Albany, NY et al.*, 2 FCC Rcd 4300 (1987), 3 FCC Rcd 4681 (1987), and *Mayville and Wickliffe, Ky., et al.*, 48 RR 2d 1232 (1981). As to Vermillion Radio's concern over the overlap of the two stations, we note that the two stations will be operating 20 channels apart.

5. Channel 272C1 can be allotted to Onawa, Iowa, in compliance with the Commission's minimum distance separation requirements and can be used at Station KOOO's present transmitter site. Channel 292A can be allotted to Vermillion, South Dakota, in compliance with the Commission's minimum distance separation requirements and can be used at Station KVRF's present transmitter site.[1] As proposed, we shall modify petitioner's permit for Station KOOO to specify operation on Channel 272C1 and Vermillion Radio's license for Station KVRF to specify operation on Channel 292A.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 6, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Onawa, Iowa	272C1
Vermillion, South Dakota	292A

7. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the permit of Barnco for Station KOOO, Onawa, Iowa, IS MODIFIED to specify operation on Channel 272C1, in lieu of Channel 272A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

8. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Vermillion Radio, Inc. for Station KVRF, Vermillion, South Dakota, IS MODIFIED to specify operation on Channel 292A in lieu of Channel 272A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station KVRF's license, BLH-3848, except the channel as specified above. Any other changes, except those so specified under Section 73.1620 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license BLH-3848, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

9. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the licensee of Station KVRF, as follows: Vermillion Radio, Inc., P.O. Box 282, Vermillion, South Dakota 57069.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 272C1 at Onawa are North Latitude 42-01-41 and West Longitude 96-11-11. The coordinates for Channel 292A at Vermillion are North Latitude 42-47-32 and West Longitude 97-00-03.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-570

In re Applications of

MEDIA-COM, INC. (hereafter Media) — File No. BPH-871231ML

EDWARD ALAN SCHUMACHER (hereafter Schumacher) — File No. BPH-880107MV

THOMAS LARKIN (hereafter Larkin) — File No. BPH-880107NL

For Construction Permit for
for a New FM Station on
Channel 260A Uhrichsville, Ohio

HEARING DESIGNATION ORDER

Adopted: December 9, 1988; Released: January 19, 1989

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Schumacher is Program Director of station WJER(FM) in Dover, Ohio. Schumacher has indicated his intent to terminate his relationship with station WJER(FM) in the event of grant of the referenced application. Accordingly, in the event of grant of Schumacher's application, Schumacher will be required to sever all connections with station WJER(FM) prior to the commencement of program test authority.

3. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

4. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the specified issue, which of the applications should be granted, if any.

6. IT IS FURTHER ORDERED, That, in the event of grant of Schumacher's application, he will be ordered to divest himself of all interests in and sever all connections with Station WJER(FM) in Dover, Ohio prior to the commencement of program test authority.

7. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

8. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

9. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-577

In re applications:

OWEN-DUMEYER PARTNERSHIP (hereafter Owen-Dumeyer)	File No. BPH-870828MC
NATIONAL COMMUNICATIONS INDUSTRIES (hereafter National)	File No. BPH-870831MF
RAKEL COMMUNICATIONS, INC. (hereafter raKel)	File No. BPH-870831MG
ERNEST J. PHILLIPS, III (hereafter Phillips)	File No. BPH-870831MH
LIBERTY PRODUCTIONS, A LIMITED PARTNERSHIP (hereafter Liberty)	File No. BPH-870831MI
WILLSYR COMMUNICATIONS LIMITED PARTNERSHIP (hereafter Willsyr)	File No. BPH-870831MJ
BILTMORE FOREST BROADCASTING FM, INC. (hereafter BFBFM)	File No. BPH-870831MK
SKYLAND BROADCASTING COMPANY (hereafter Skyland)	File No. BPH-870831ML
BILTMORE BROADCASTING INC. (hereafter BBI)	File No. BPH-870831MM
UNITED BROADCASTING ENTERPRISES, INC. (hereafter United)	File No. BPH-870831MN
SHAMROCK COMMUNICATIONS, INC. (hereafter Shamrock)	File No. BPH-870901MB
ORION COMMUNICATIONS LIMITED (hereafter Orion)	File No. BPH-870901ME
HARBINGER BROADCASTING COMPANY (hereafter Harbinger)	File No. BPH-870901MF

For a Construction Permit
For a New FM Station
in Biltmore Forest, North Carolina
on Channel 243A

HEARING DESIGNATION ORDER

Adopted: December 9, 1988; Released: January 19, 1989

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Preliminary Matters.* On May 9, 1988, Willsyr filed a Petition to Deny against BFBFM. Willsyr alleges that BFBFM, by its November 16, 1987 amendment, altered its proposed site coordinates by 3 seconds latitude and 1 second longitude, but included no new site certification. Willsyr concludes, therefore, that BFBFM's application is untenderable as it does not have an acceptable site assurance certification.

3. The Commission does not agree with Willsyr's conclusion. By way of its *timely* November 16, 1987 amendment, BFBFM states that it is only correcting the coordinates submitted in the original application. Consequently, in its amendment, BFBFM has submitted new exhibits for all information pertaining to the correction in coordinates (*e.g.*, Section V-B of FCC Form 301, antenna sketch, spacing study and contour map). On page 2 of the Engineering Statement of the November 16, 1987 amendment it is stated that "[t]he proposed transmitter site requested by this application is available for said use." The amendment, and thus the above statement, was signed as accurate and truthful by both the president of BFBFM and its broadcasting consultant.

4. Furthermore, BFBFM had filed a site certification in Section VII of its original application. Since BFBFM had a signed site certification within its originally submitted application, which on its face was valid, the Commission cannot now dismiss BFBFM's application as untenderable. By means of the *Report and Order* in MM Docket 84-750, 50 Fed. Reg. 19936 (May 13, 1985), the Commission imposed a requirement on broadcast applicants to include as part of their applications certifications of reasonable assurance of site availability. *See* Paragraph 22 of the *Report and Order, supra.* Also, by means of the same document (*See* Paragraph 23 and Appendix D), the Commission established that site-availability certification was one element of tenderability or substantial completeness. However, the *Report and Order* is silent as to the applicability of this specific tenderability requirement with respect to amendments submitted pursuant to 47 C.F.R. § 73.3522. Consequently, the Commission will not return as unacceptable an amendment missing this information. Finding that BFBFM's application, and specifi-

cally its site certification, fully complies with the tender requirements advanced in Appendix D of the *Report and Order, supra*, the Commission will deny Willsyr's Petition to Deny herein. However, in light of the fact that the November 16, 1987 amendment did not contain a certification, a site availability issue will be added.

5. On May 9, 1988, Willsyr filed a Petition to Deny against Skyland. Willsyr's petition is essentially an attempt to specify issues. Since the Commission directed the deletion of all pleadings in pending cases, the matters sought to be raised in this petition will not be considered. Accordingly, an opportunity to raise any allegations contained therein will be afforded the parties post-designation pursuant to Section 1.229 of the Commission's Rules. *See Report and Order* in re *Revised Procedures for the Processing of Contested Broadcasting Applications; Amendments of Part 1 of the Commission's Rules*, 72 FCC 2d 202, (1979) (*Paglin Report and Order*) Therefore, the Petition to Deny filed by Willsyr against Skyland will herein be dismissed.

6. *Section II, Item 4*. Section II, Item 4 of FCC Form 301 requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. raKel and Willsyr have not completed Item 4 correctly. Willsyr's application gives a post office box number as the address of its general partner and raKel only lists the city and state for its principals. Accordingly, Willsyr and raKel must submit amendments containing all information required by Section II, Item 4 to the presiding Administrative Law Judge.

7. *raKel*. raKel was also an applicant for a construction permit for a new FM facility in Upper Arlington, Ohio (File No. BPH-860507PE). By its June 7, 1988 amendment, raKel informed the Commission that the presiding Judge specified the following issues against it in the Upper Arlington proceeding:

> (a) To determine whether raKel Communications, Inc. ever possessed "reasonable assurance" that its currently designated transmitter/antenna location would be available to it, and if not, the effect thereof on its basic qualifications to be a Commission licensee.
>
> (b) To determine whether raKel engaged in misrepresentations to the Commission, and if so, the effect thereof on its basic qualifications to be a Commission licensee.

Memorandum Opinion and Order in MM Docket 87-370, FCC 87M-3143, released December 3, 1987.

8. The Upper Arlington proceeding concluded without the above issues being resolved. Therefore, these unresolved questions continue to cast uncertainty upon whether raKel is qualified to be a Commission licensee. Accordingly, appropriate issues will be specified below.

9. *BBI*. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and the applicant have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by BBI would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

10. *Shamrock*. The Commission requires that if there will be five or more fulltime station employees, the applicant must complete and file Section VI of Form 301, and supply a statement detailing hiring and promotion policies even though there may be only a few members of minorities residing within the proposed service area. Although Shamrock has filed such a statement, it is deficient. Shamrock has not listed any specific minority or women's organizations as sources for recruitment. Accordingly, Shamrock will be required to file an amended EEO program with the presiding Administrative Law Judge, or an appropriate issue will be specified by the Judge.

11. *Other Matters*. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

12. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

AMENDMENTS	AMENDMENTS FILED
Owen-Dumeyer	August 30, 1988
raKel	June 7, 1988
BFBFM	December 23, 1987
	February 25, 1988
	May 11, 1988
BBI	November 13, 1988
	November 23, 1988
Shamrock	May 11, 1988

13. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

14. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

> 1. To determine whether BFBFM has reasonable assurance that the transmitter site specified will be available to it.
>
> 2. To determine whether raKel ever possessed "reasonable assurance" that its transmitter/antenna location designated at the time of hearing in the Upper Arlington, Ohio proceeding would be available to it, and if not, the effect thereof on its basic qualifications to be a Commission licensee.

3. To determine whether raKel engaged in misrepresentations to the Commission, and if so, the effect thereof on its basic qualifications to be a Commission licensee.

4. To determine whether there is a reasonable possibility that the tower height and location proposed by BBI would constitute a hazard to air navigation.

5. To determine which of the proposals would, on a comparative basis, best serve the public interest.

6. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

15. IT IS FURTHER ORDERED, That the Petition to Deny BFBFM's application filed by Willsyr IS HEREBY DENIED.

16. IT IS FURTHER ORDERED, That the Petition to Deny Skyland's application filed by Willsyr IS HEREBY DISMISSED.

17. IT IS FURTHER ORDERED, That Willsyr and raKel shall submit amendments which contain the information required by Section II, Item 4 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

18. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

19. IT IS FURTHER ORDERED, That Shamrock file an amended EEO Program with the presiding Administrative Law Judge within 30 days of the release of this Order specifying minority and women's organizations which will be used for the purposes of recruitment.

20. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Owen-Dumeyer, raKel, BFBFM, BBI, and Shamrock ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

21. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

22. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

23. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-578

In re Applications of

KNIGHT RADIO, INC. (hereafter Knight) File No. BPH-871019MC

PENOBSCOT INDIAN NATION (hereafter Nation) File No. BPH-871026MO

For Construction Permit
for a New FM Station on
Channel 297B in Old Town, Maine

HEARING DESIGNATION ORDER

Adopted: December 9, 1988; Released: January 19, 1989

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Station Classification.* Old Towne, ME and the reference coordinates for the Channel 297B allocation (as adopted by the *Report and Order* in Docket 86-314, DA 87-999, released August 6, 1987) are both located in Zone I (*see* 47 C.F.R. § 73.205). Each applicant, however, has chosen to locate its proposed transmitter site in Zone II, in which Class B stations do not exist. Knight has requested a waiver of the zone/class requirements so as to permit its application to be filed as a Class B with a Zone II transmitter site. Nation has simply requested Class C2 facilities for its Zone II transmitter site. Each applicant indicates that the appropriate spacings will be met under 47 C.F.R. § 73.207(a) no matter which classification, B or C2, is used.

3. Previous Commission policy has been to classify a station by the zone in which the transmitter site is located, not by the zone in which the community of license lies, provided that the applicable spacings are met. In keeping with this policy, and since both applications meet the spacings required of a Zone II Class C2 station, we will classify both Knight's and Nation's proposals as Class C2 stations. Upon grant of a construction permit to either of these parties, the allocation will be reclassified to Class C2 at that time. This action will not affect the maximum facilities permitted since both Class B and Class C2 stations are allowed to operate with 50 kw effective radiated power at an antenna height above average terrain of 150 meters.

4. Knight petitioned for leave to amend its application on July 21, September 12, October 19, 1988, and November 21, 1988. The accompanying amendments were filed after January 6, 1988, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

5. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

7. IT IS FURTHER ORDERED, That, in the event of a grant of either application, the construction permit shall be conditioned in accordance with the policy indicated in paragraphs 2 and 3 herein.

8. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Knight ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

9. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

10. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-579

In re Applications of

WAYNE PRICE D/B/A/ PRICE BROADCASTING COMPANY (hereafter Price) — File No. BPH-871123MB

BOONE COMMUNICATIONS COMPANY (hereafter Boone) — File No. BPH-871124MY

For a Construction Permit
For a New FM Station in
Danville, West Virginia on Channel 233A

HEARING DESIGNATION ORDER

Adopted: December 9, 1988; Released: January 19, 1989

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Boone petitioned for leave to amend its application on July 28, 1988. The amendment was filed after February 14, 1988, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment will be accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

3. Boone's principals, Mr. Callaway and Mr. Blake, are each 50% owners of station WWBB, Madison, West Virginia. They have indicated their intent to terminate their relationship with WWBB if Boone's application for construction permit is designated for comparative hearing. Accordingly, an appropriate condition will be specified.

4. Section II, Item 4 of FCC Form 301 (October 1986) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. Price has not completed Item 4 correctly. Price's application gives a post office box number as the residence address of its principal, A. Wayne Price. Accordingly, Price must submit an amendment which gives all the information required by Section II, Item 4 to the presiding Administrative Law Judge within 30 days of the release of this Order.

5. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications, if any, should be granted.

7. IT IS FURTHER ORDERED, That the petition for leave to amend filed by Boone IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

8. IT IS FURTHER ORDERED, That, in the event of a grant of its application, Boone's principals Callaway and Blake shall divest themselves of all interests in and sever all connections with Station WWBB(FM), Madison, West Virginia, prior to the commencement of program test authority.

9. IT IS FURTHER ORDERED, That Price shall submit information in accordance with Paragraph 4 above within 30 days of the release of this Order.

10. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Branch, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

11. IT IS FURTHER ORDERED, That to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

12. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-597

In the Matter of

Amendment of Section 73.202(b), RM-6442
Table of Allotments,
FM Broadcast Stations.
(Prescott Valley, Arizona)

NOTICE OF PROPOSED RULE MAKING

Adopted: November 30, 1988; Released: January 23, 1989

By the Deputy Chief, Policy and Rules Division:

1. Prescott Valley Broadcating Co., Inc. (petitioner), licensee of Station KIHX-FM, Channel 292A, Prescott Valley, Arizona, has filed a petition for rule making seeking the substitution of Channel 294C2 for Channel 292A and modification of its permit to specify operation on the higher-powered channel.

2. We believe this proposal is in the public interest, since it could provide a wider coverage area FM service to Prescott Valley. A staff engineering analysis has determined that Channel 294C2 can be substituted for Channel 292A in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, provided the transmitter is sited in an area at least 17.3 kilometers (10.7 miles) south[1] of the community to avoid short-spacing to a pending rule making proposal (RM-5819) to modify Station KSMK-FM, Cottonwood, Arizona, from Channel 240A to Channel 240C,[2] and to the construction permit issued to Station KKGL(FM), Channel 294C1, Pinetop, Arizona.[3]

3. In view of the above, we shall propose to modify the Class A license of Station KIHX-FM, as requested, in the event Channel 294C2 is substituted for Channel 292A at Prescott Valley. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we will not accept other expressions of interest in the use of Channel 294C2 at Prescott Valley.

4. Accordingly, in order to provide Prescott Valley with a wider coverage area FM service, we seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Prescott Valley, Arizona	294A	252C2,[4] 294C2

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **March 16, 1989,** and reply comments on or before **March 31, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows:

Prescott Valley Broadcasting Co., Inc.
P.O. Box 26523
Prescott Valley, AZ 86312

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Reference coordinates used in this determination are 34-27-32 and 112-21-37.

[2] Reference coordinates utilized for Channel 240C at Cottonwood, AZ are 34-46-03 and 112-08-04. Additionally, reference coordinates specified for that channel by the Cottonwood proponent, on reconsideration, are 34-45-17 and 112-06-55.

[3] Reference coordinates at the permit site for Station KKGL(FM) are 34-12-20 and 109-56-26.

[4] Channel 252C2 has been requested in RM-6388.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-282

In the Matter of

Amendment of Section 73.202(b), RM-6300
Table of Allotments,
FM Broadcast Stations.
(Greenwood, Mississippi)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 30, 1988; Released: January 23, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 3 FCC Rcd 4006 (1988), proposing the substitution of FM Channel 230A for 270A at Greenwood, Mississippi. The *Notice* was issued in response to a petition filed by Itawamba County Broadcasting Company, Inc. (petitioner), licensee of FM Station WFTA, Channel 270C2, Fulton, Mississippi. Petitioner filed comments in support of the proposal. Clay Ewing, applicant for Channel 270A at Greenwood, also filed supporting comments. No other comments were received.

2. As stated in the *Notice*, petitioner has a construction permit application on file for Channel 270C2 at Fulton, Mississippi (BMPH 861209IA). According to petitioner, the substitution of channels at Greenwood will permit it to move its transmitter and antenna to a better location in a southwest direction from its present site. Petitioner indicated that at the present time it experiences power outages up to two hours in length on a consistent basis where it is located. If the channel substitution is made at Greenwood, according to petitioner, it would be able to move to a location which would put it on a much improved power system and help eliminate transformer burnouts, tube failure and off air time.

3. Channel 270A was allotted to Greenwood in MM Docket 84-231 and made available for application in window number 32, which closed on September 22, 1987. At the time the *Notice* was issued in this proceeding, there were two applications on file at the Commission. The remaining applicant for Channel 270A, Clay Ewing, filed comments stating he had no objections to the substitution of channels at Greenwood, provided there is no delay in the grant of his pending application and construction permit for his proposed station.

4. We believe the public interest would be served by the substitution of Channel 230A for Channel 270A at Greenwood, Mississippi, in order to allow Station WFTA, Fulton, Mississippi, to relocate its facility to eliminate power outages and off air time. The proposed substitution at Greenwood can be accomplished in compliance with the minimum distance separation requirements of the Commission's Rules at the applicant's specified site.[1] In accordance with Commission policy, we will retain the applicant's cut-off protection for Channel 270A when the applicant amends to specify Channel 230A, since the channels are equivalent. *See Phillipsburg, Kansas*, 48 Fed. Reg. 10844, March 15, 1983.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 9, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Greenwood, Mississippi	230A, 282A, 256C

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 230A at Greenwood are 33-31-55 and 90-11-38.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-596

In the Matter of

Amendment of Section 73.202(b), RM-6430
Table of Allotments,
FM Broadcast Stations.
(Austin-Crothersville, Indiana)

NOTICE OF PROPOSED RULE MAKING

Adopted: November 30, 1988; Released: January 23, 1989

By the Deputy Chief, Policy and Rules Division:

1. A petition for rule making has been filed by Jacksy Radio Association (petitioner) proposing the allotment of FM Channel 287A on a hyphenated basis to the communities of Austin-Crothersville, Indiana, as a first local broadcast service. Petitioner stated its intent to apply for the channel if allotted.

2. Hyphenation is an allotment tool which we have used very sparingly. In the past, we have done so only where it appeared that the communities should be treated as one due to their nearness and mutual economic, trade, cultural and social interests. *See Eagle Nest and Angel Fire, New Mexico*, 3 FCC Rcd 2520 (1988). Austin (population 4,857),[1] in Scott County (population 20,600) and Crothersville (population 1,747), in Jackson County (population 37,300), are located 6.4 kilometers (3.4 miles) apart. According to the *Rand McNally Commercial Atlas and Marketing Guide* (1988 Ed.), both Austin and Crothersville are incorporated communities, which have their own post office and financial institutions. However, petitioner has not provided sufficient information to demonstrate that Austin and Crothersville should be treated as one community by reason of their proximity and common social, cultural, trade and economic interests. Therefore, if petitioner wishes to pursue a hyphenated allotment, it must submit additional information regarding Austin and Crothersville to demonstrate that the communities are so interdependent that such an allotment is required. In the absence of such justification, we would favor the allotment of Channel 287A to Austin since it is the larger community.

3. Petitioner should also note that if its intent is to have its proposed station identify with both Austin and Crothersville, then, it may include both communities in the station's official identification.

4. We believe that petitioner's proposal to provide Austin and Crothersville with their first local service warrant further consideration. A staff engineering analysis has determined that Channel 287A can be allotted to Austin in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, provided the transmitter is located at least 3.4 kilometers (2.1 miles) east,[2] or to Crothersville at a restricted site approximately 7.6 kilometers (4.7 miles) east[3] of the community, in each instance to avoid short-spacing to Station WQRK(FM), Channel 288A, Bedford, Indiana.[4]

5. In view of the above, the Commission believes it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

	Channel No.	
City	Present	Proposed
Austin, Indiana	--	287A
	OR	
Crothersville, Indiana	--	287A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **March 16, 1989** and reply comments on or before **March 31, 1989**, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows:

Jacksy Radio Association
5125 West Tenth Street
Indianapolis, Indiana 46227

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Population figures used herein were supplied by the petitioner, as reported in the 1980 U.S. Census.

[2] Reference coordinates used in this determination are 38-44-15 and 85-46-14.

[3] Reference coordinates at the restricted site for Channel 287A are 38-47-00 and 85-45-17.

[4] Reference coordinates at the licensed site of Station WQRK(FM) are 38-54-29 and 86-28-28.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 85-38

In the Matter of

Review of the Technical and
Operational Requirements of
Part 76, Cable Television

ORDER GRANTING MOTION FOR EXTENTION OF TIME FOR FILING REPLY COMMENTS

Adopted: January 9, 1989; Released: January 10, 1989

By the Chief, Mass Media Bureau:

1. On October 11, 1988, the Commission released a *Further Notice of Proposed Rule Making* (*Further Notice*) in the captioned matter.[1] The *Further Notice* proposes to extend the technical signal quality guidelines and policies the Commission adopted for Class I cable channels, in the *Report and Order* in this proceeding, to the television transmissions on Class II, III, and IV cable channels. Comments on the proposal were to be filed on or before December 12, 1988, with replies on or before January 11, 1989. On December 29, 1988, the National Cable Television Association, Inc. (NCTA) filed a motion requesting that the comment reply period be extended to February 11, 1989.

2. In its motion, NCTA asserts that a number of first-round comments filed at this stage of the proceeding contain proposals for specific and, in some cases, extensive new cable technical standards. NCTA states that the standards submitted in the comments go far beyond the existing guildelines and require expert engineering analysis. For example, NCTA states that it intends to seek broad input and assistance from the cable industry engineering community in reviewing the standards proposed in the comments. In view of the complex nature of these purported proposals, NCTA believes an extention in the reply comment period is necessary to allow it and other interested members of the industry to fully evaluate them.

3. In light of the complexities of the technical standards, and related policy issues as referenced in the *Further Notice*, we believe that additional time for filing reply comments is warranted, and that the public interest would be served by a grant of NCTA's request.

4. Accordingly, IT IS ORDERED THAT the Motion for Extension of Reply Comment Period filed by the National Cable Television Association, Inc. IS GRANTED and that the date for filing reply comments is EXTENDED to February 11, 1989.

5. This action is taken pursuant to authority found in Section 4(i) and 303(r) of the Communications Act of 1934, as amended and Sections 0.204(b), 0.283, 1.46 and 1.45 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Mass Media Bureau

FOOTNOTE

[1] *See* Federal Register / Vol. 53, No. 202 / Wednesday, October 19, 1988.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

The Prescription of Revised Percentages of Depreciation pursuant to the Communications Act of 1934, as amended for:

GTE NORTH INCORPORATED
INDIANA BELL TELEPHONE COMPANY, INCORPORATED
SOUTHERN NEW ENGLAND TELEPHONE COMPANY

ORDER

Adopted: December 29, 1988; Released: January 23, 1989

By the Commission: Commissioner Dennis dissenting in part and issuing a statement at a later date.

I. INTRODUCTION AND BACKGROUND

1. In this Order, we prescribe depreciation rates for three carriers that filed requests in 1988 for annual updates of their depreciation factors. We developed the rates listed in the Appendix after considering the studies underlying the carriers' filings and providing an opportunity for public comment. We prescribed the amortization amounts listed in the Appendix in prior orders.[1]

2. Depreciation is the loss of service value incurred in connection with the use and prospective retirement of telecommunications plant from known causes, the effect of which can be forecast with reasonable accuracy.[2] Depreciation accounting is the mechanism through which the loss in service value is distributed to operating expense during the service life of the plant. This Commission is authorized to prescribe depreciation rates to compute the allowable depreciation expense for telephone common carriers as part of our responsibilities under the Communications Act of 1934. [3]

3. Depreciation is an important factor in the determination of a carrier's revenue requirement. It has two primary effects. First, the depreciation expense is included directly as a part of a carrier's revenue requirement. Second, the accumulation of the depreciation expense, which is commonly described as the depreciation reserve, is a deduction from the rate base and therefore affects the return component of a carrier's revenue requirement.

II. REVIEW PROCEDURES

4. It has been our practice to review and revise the depreciation rates of the larger telephone carriers every three years based upon a comprehensive review of all equipment life and salvage factors. Although this triennial review process proves adequate in most instances, it has often been necessary to make adjustments to the prescribed rates in the interim years to recognize special situations, such as the establishment of new accounts or major changes in a carrier's operating plans. Moreover, in 1980, after we adopted extensive revisions to the methods the carriers must use in computing depreciation,[4] we decided that it may be necessary to update rates annually to keep them in line with accounting activity (*i.e.*, plant additions, retirements, and net salvage). Accordingly, in *1983 Depreciation Order*,[5] we established streamlined study procedures whereby carriers could file for the annual update of rates as necessary between triennial reviews using the same equipment life and salvage estimates that underlie prescribed rates. In 1988, Indiana Bell Telephone Company, Inc. (Indiana Bell) and Southern New England Telephone Company (Southern New England) filed for annual updates using these streamlined procedures. In addition, GTE North filed for a depreciation rate for its recently established Aircraft Account in its Ohio jurisdiction.

5. The Common Carrier Bureau (Bureau) discussed questions raised during the review process concerning the requested rates in correspondence and telephone conversations with the carriers and the state commissions. Following these discussions and after reevaluating its preliminary recommendations, the Bureau issued a Public Notice dated August 26, 1988, which announced that it was considering the revision of certain depreciation rates for these three carriers.[6] The Bureau transmitted to each carrier and respective state commission a copy of the Public Notice and a list of the factors used to calculate its recommended depreciation rates. No comments were filed.

III. DISCUSSION

A. *Prescribed Rates*

6. Generally, the rates and amortizations requested in interim years between triennial reviews are based on the streamlined procedures that rely on the same equipment life and salvage estimates that were established in the most recent triennial review. As noted previously, however, carriers may also request interim period rates and amortizations for other reasons. In the current filings, Indiana Bell used the streamlined procedures for all accounts except Central Office Equipment (COE) Step-by-Step, COE Crossbar, and Public Telephones, and Southern New England used the streamlined procedures for all accounts except Operator Systems. In addition, GTE requested the prescription of a rate for its new Aircraft Account in its Ohio jurisdiction.[7] Full studies were provided for the five exceptions identified above.

7. After reviewing these full studies in detail, the Bureau proposed life and salvage factors for these accounts. Inasmuch as no objections were raised in response to the public notice regarding the new life and salvage factors, we adopt their use and the depreciation rates derived therefrom.

8. The Bureau reviewed the annual update proposals for the remaining accounts for Indiana Bell and Southern New England and determined that their proposals were based upon the life and salvage factors underlying the currently prescribed rates, and the accounting activity since the effective dates of the prior studies. Further, the Bureau determined that the proposed rates were calculated in accordance with both our annual update procedures and our depreciation methods. No objections were

raised for these accounts, and we find that the depreciation studies and analyses justify the continued use of the factors underlying the currently prescribed rates. Accordingly, we adopt these rates as shown in the Appendix.

B. ***Effective Dates***

9. Indiana Bell and GTE North filed for a January 1, 1988, effective date and Southern New England filed for a January 1, 1989, effective date for the rates requested in their respective filings. Inasmuch as these carriers requested effective dates that are in accordance with our rules and our past depreciation orders (*See 1981 Depreciation Rates)*, [8] and no objections were raised regarding these effective dates, we hereby adopt them.

C. ***Submission of Whole - Life Depreciation Factors***

10. In the depreciation prescription orders which we have approved since our decision in *Property Depreciation*,[9] we have required that depreciation filings include whole-life rates so that we could determine the size of the depreciation reserve imbalance and the speed with which our actions were resolving the imbalance. Because of our continued interest in these matters, we require the carriers named herein to file whole-life rates that are consistent with the prescribed rates until notified to the contrary.

D. ***Conclusion***

11. Having considered the carriers' annual update proposals, the views and recommendations of the states and the recommendations of the Bureau, we adopt the rates and effective dates listed in the Appendix.

IV. ORDERING CLAUSE

12. ACCORDINGLY IT IS ORDERED pursuant to Sections 1, 4(i), 201-205 and 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 201-205 and 220(b), that the percentages of depreciation set forth in the Appendix ARE PRESCRIBED effective on the dates listed.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] The Prescription of Revised Percentages of Depreciation Pursuant to the Communications Act of 1934, as amended for: AT&T Communications - Interstate Division *et. al.*, *Order* 3 FCC Rcd 1242 (1988); The Prescription of Revised Percentages of Depreciation Pursuant to the Communications Act of 1934, as amended for: Alascom, Inc. *et. al.*, *Order* 3 FCC Rcd 1724 (1988).

[2] 47 C.F.R § 32.9000.

[3] *See generally* 47 U.S.C § 220(b) (1982). In recent years, we have also prescribed amortization amounts to resolve depreciation accounting problems. *See* Amortization of Depreciation Reserve Imbalances of Local Exchange Carriers Report and Order, 3 FCC Rcd 984 (1988). An amortization amount is a specific amount to be charged to depreciation expense each year as opposed to a depreciation rate which is applied to the plant investment to determine the amount of the expense charge.

[4] *See* Amendment of Part 31 (Uniform System of Accounts for Class A and Class B Telephone Companies) 83 FCC 2d 267 (1980) (*Property Depreciation), reconsideration*, 87 FCC 2d 916 (1981), *Supplemental Opinion and Order*, 87 FCC 2d 1112 (1981).

[5] The Prescription of Revised Percentages of Depreciation Pursuant to Section 220(b) of the Communications Act of 1934, as amended for: AT&T--Long Lines Department, 96 FCC 2d 257 (1983) (*1983 Depreciation Order*).

[6] Depreciation Rate Prescriptions Proposed for Domestic Telephone Companies - Notice of Opportunity to Comment, 3 FCC Rcd 5841 (1988).

[7] For all other accounts, GTE proposed no change in rate or amortization.

[8] The Prescription of Revised Percentages of Depreciation Pursuant to Section 220(b) of the Communications Act of 1934 as amended for: American Telephone and Telegraph Company, Long Lines Department, 88 FCC 2d 1223 (1982), (*1981 Depreciation Rates)*, at paragraph 56-60.

[9] *See* note 3, *supra*.

APPENDIX
PAGE 1

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
INDIANA BELL TELEPHONE COMPANY, INCORPORATED

Effective January 1, 1988

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	Motor Vehicles	3.7	15.0	42.0	11.6	0
2115	Garage Work Equipment	7.0	3.0	41.0	8.0	24
2116	Other Work Equipment	7.0	3.0	41.0	8.0	380
2121	Buildings	29.0	5.0	20.7	2.6	1439
2122	Furniture	22.0	5.0	25.8	3.1	-22
2123	Office Support Equipment	7.2	5.0	24.8	9.8	-13
2123	Company Comm. Equipment	5.6	-6.0	26.8	14.1	-287
2124	General Purpose Computers	2.9	3.0	48.1	16.9	0
2211	Analog Electronic Switching	9.4	3.0	35.1	6.6	8247
2212	Digital Electronic Switching	12.8	3.0	11.4	6.7	-508
2215	Step-by-Step Switching	2.4	-3.0	66.7	15.1	0
2215	Crossbar Switching	2.2	-2.0	70.4	14.4	0
2220	Operator Systems	9.6	3.0	33.8	6.6	167
2231	Other Radio Facilities	5.6	-9.0	47.1	11.1	0
2232	Circuit Equipment - DDS	7.6	-4.0	31.7	9.5	-65
2232	Circuit Equipment - Other	6.1	3.0	32.8	10.5	6010
2351	Public Telephone Term. Eqpt.	0.0	0.0	94.4	9.0	0
2362	Other Terminal Equipment	3.6	-3.0	63.8	10.9	0
2411	Poles	16.3	-77.0	60.6	7.1	247
2421	Aerial Cable	14.3	-8.0	38.3	4.9	14
2422	Underground Cable	17.3	-6.0	33.2	4.2	4857
2423	Buried Cable	15.5	-9.0	31.7	5.0	2630
2424	Submarine Cable	9.8	-1.0	64.5	3.7	2
2426	Intrabuilding Cable	15.9	-8.0	27.1	5.1	2
2431	Aerial Wire	6.4	-35.0	53.0	12.8	-358
2441	Conduit Systems	46.0	-24.0	24.3	2.2	1249

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-13, released January 21, 1988, are continued.

APPENDIX
PAGE 2

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
SOUTHERN NEW ENGLAND TELEPHONE COMPANY - CONNECTICUT

Effective January 1, 1989

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	Motor Vehicles	4.2	12.0	44.5	10.4	0
2115	Garage Work Equipment	12.1	3.0	22.4	6.2	10
2116	Other Work Equipment	5.6	1.0	41.3	10.3	431
2121	Buildings	26.0	-5.0	29.3	2.9	-588
2122	Furniture	8.8	3.0	24.5	8.2	871
2123	Office Equipment	5.8	0.0	57.3	7.4	226
2123	Company Communications Equip	5.1	3.0	58.3	7.6	0
2124	General Purpose Computers	2.9	5.0	52.9	14.5	0
2211	Analog Electronic Switching	10.0	0.0	33.4	6.7	10114
2212	Digital Electronic Switching	12.5	2.0	10.2	7.0	160
2215	Step-By-Step Switching	2.2	-9.0	75.8	15.1	0
2215	Crossbar Switching	2.6	-9.0	77.3	12.2	0
2220	Operator Systems-Digital	16.0	2.0	1.2	6.1	0
2220	Operator Systems-Other	4.6	0.0	61.0	8.5	555
2231	Radio Systems	8.6	-2.0	43.8	6.8	-24
2232	Circuit Equipment	8.5	0.0	37.2	7.4	3443
2232	Circuit DDS	4.6	2.0	48.1	10.8	0
2351	Public Tel Terminal Equip	5.3	1.0	46.9	9.8	62
2362	Other Terminal Equipment	4.1	-3.0	68.8	8.3	0
2362	Station Apparatus-Tel & Misc	7.3	0.0	49.2	7.0	-427
2411	Poles	21.0	-60.0	45.4	5.5	-1066
2421	Aerial Cable	16.9	-19.0	37.7	4.8	2628
2422	Underground Cable	18.5	-14.0	38.1	4.1	4243
2423	Buried Cable	18.0	-9.0	27.3	4.5	1101
2424	Submarine Cable	18.1	0.0	52.2	2.6	7
2426	Intrabuilding Network Cable	18.2	-19.0	38.5	4.4	518
2441	Conduit Systems	38.0	-27.0	30.7	2.5	2424

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-13, released January 21, 1988, are continued.

APPENDIX
PAGE 3

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE NORTH INCORPORATED - OHIO

Effective January 1, 1988

Rate	Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate	Annual Amort. Expense
		(years)	(%)	(%)	(%)	($000)
		A	B	C	D=(100%-B-C)/A	E
2113	Aircraft	7.0	48.0	5.7	6.6	

The figures in Columns B, C, and D are percentages of gross book cost.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GTE HAWAIIAN TELEPHONE COMPANY — File No. I-T-C-89-007

Application for authority to resell international RF earth station services.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: January 9, 1989; Released: January 23, 1989

By the Chief, International Facilities Division:

1. The above-captioned application, filed on October 17, 1988 by GTE Hawaiian Telephone Company (HTC) and supplemental by letter of December 8, 1988 requests authority pursuant to the Communications Act of 1934, as amended, to resell the international RF earth station services of GTE Spacenet Corporation (Spacenet) to provide international RF earth station services at GTE Spacenet's earth station located at Sunset Beach, Hawaii for international services. The application was placed on public notice on October 26, 1988. No comments were received.

2. HTC, a Hawaii Corporation, is already providing various international services including international baseband earth station services. It now proposes to resell international RF earth station services at the Sunset earth station. In recent authorizations of new entrants, the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support additional carriers and that the added competition will be in the public interest.[2]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future public convenience and necessity require the provision of international RF earth station services to the general public by HTC.

4. Accordingly, IT IS ORDERED that application File No. I-T-C-89-007 IS GRANTED, and HTC is authorized to provide international RF earth station services by the resale of the international RF earth station services set forth in Spacenet's Tariff FCC No.5 at the Sunset earth station in Hawaii.

5. IT IS FURTHER ORDERED that the HTC shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

6. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* the cases cited in Teltec Saving Communications Co., Mimeo No. 3548, (released April 4, 1986) at n.2.

[2] FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

U.S. OPERATORS, INC. File No. I-T-C-89-023

Application for authority to operate
as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: January 6, 1989; Released: January 23, 1989

By the Chief, International Facilities Division:

1. The above-captioned application, filed on October 31, 1988, by U.S. Operators, Inc. (USO), requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched message telephone services of existing common carriers to provide international switched voice service between the U.S. and various international points, including Canada and Mexico. The application was placed on public notice on November 23, 1988. No comments were received.

2. The applicant is a non-dominant domestic resale common carrier. It now proposes to resell international switched voice services in competition with other common carriers already providing resale of such services. In recent authorizations of new entrants the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support an additional carrier and that the added competition will be in the public interest.[2]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice services to the general public by USO.

4. Accordingly, IT IS ORDERED that application File No. I-T-C-89-023 IS GRANTED, and USO is authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariff F.C.C. Nos. 1 and 2, MCI's Tariff F.C.C. No. 1 and US Sprint's Tariffs F.C.C. Nos. 1 and 2, between the United States and those points listed in those tariffs.

5. Copies of any operating agreements entered into between the applicant and its correspondents shall be filed with the Commission within 30 days of their execution.

6. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. Section 43.61 (October 1, 1987).

7. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

8. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules may may be filed within 30 days of public notice of this Order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* the cases cited in the Teltec Saving Communications Co., Mimeo No. 3548, (released April 4, 1986) at n.2.

[2] FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY
CICI, INC.
FTC COMMUNICATIONS, INC.
MCI INTERNATIONAL, INC.
TRT TELECOMMUNICATIONS CORPORATION
US SPRINT COMMUNICATIONS COMPANY
WU WORLD COMMUNICATIONS, INC.

File No. I-T-C-88-181

Joint Application for Authorization Under Section 214 of the Communicatons Act of 1934, as Amended, to Construct, Assign Capacity in and Operate a High Capacity, Digital Submarine Cable System Between and Among the United States, Canada, the United Kingdom, France and Spain.

ERRATUM

Released: January 23, 1989

On December 27, 1988, the Commission's Common Carrier Bureau released a Memorandum Opinion, Order and Authorization (DA 88-1962), in the above captioned proceeding. The ownership interest of Australia (OTC) of Segment F of the TAT-9 Cable System, listed in Appendix 1, is corrected from 2.20986% to 2.20968%.

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-125
Phase I

In the Matter of

Annual 1985 Access Tariff Filings

ERRATUM

Released: January 24, 1989

1. In the Order adopted by the Common Carrier Bureau on December 2, 1988, in the above-captioned proceeding, the Bureau inadvertently released the Order with the number "DA 88-1869." The correct DA number for that Order is "DA 88-1868."

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-370

In the Matter of

Amendment of Section 73.202(b), RM-6311
Table of Allotments,
FM Broadcast Stations.
(Idaho Falls, Idaho)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 30, 1988; Released: January 24, 1989

By the Deputy Chief, Policy and Rules Division:

1. Pursuant to the request of AJP Investment Co., Inc. (petitioner) the Commission has before it for consideration the *Nouce of Proposed Rule Making*, 3 FCC Rcd 4648 (1988), proposing the allotment of Channel 288C to Idaho Falls, Idaho, as that community's fourth FM service. Petitioner filed comments requesting allotment of 288C1 in lieu of 288C, because upon further engineering study it was determined that the antenna height required by a full Class C on this allotment would not be feasible. Petitioner stated its intention to apply for the channel, if allotted. No other comments were received.

2. A staff engineering analysis has determined that the allotment of Channel 288C1 can be made in compliance with the minimum distance separation requirements of the Commission's Rules.[1] In view of the fact that the proposed allotment could provide Idaho Falls with its fourth FM service, we believe the public interest would better be served by allotting Channel 288C1 in lieu of 288C to Idaho Falls.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 10, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Idaho Falls, Idaho	241C1, 256C1
	277C1, 288C1

4. The window period for filing applications will open on **March 13, 1989,** and close on **April 12, 1989.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Idaho Falls, Channel 288C1, are 43-29-30 and 112-02-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-113

In re Applications of

ROBERT L. DEAN & CHARLES THOMAS, SR. d/b/a DEAN-THOMAS COMMUNICATIONS	File No. BPH-860312MR
ROBERT A. JONES	File No. BPH-860317NG
COLLEGE TOWN RADIO LIMITED PARTNERSHIP	File No. BPH-860317NH

For Construction Permit for a New FM Station on Channel 286A in Bridgewater, Virginia

Appearances

Dennis F. Begley and *Cheryl A. Kenny* on behalf of Robert L. Dean & Charles Thomas, Sr. d/b/a Dean-Thomas Communications; *Timothy E. Welch* on behalf of Robert A. Jones; *Henry Solomon* on behalf of College Town Radio, Limited Partnership; and *Charles E. Dziedzic* and *Y. Paulette Laden* on behalf of the Chief, Mass Media Bureau, Federal Communications Commission.

SUMMARY DECISION OF ADMINISTRATIVE LAW JUDGE RICHARD L. SIPPEL

Issued: January 11, 1989; Released: January 24, 1989

1. This is a ruling on a Motion For Summary Decision filed on November 8, 1988, by Robert L. Dean & Charles Thomas, Sr., d/b/a Dean-Thomas Communications (Dean-Thomas), related pleadings including two Petitions For Leave To Amend filed on November 8, 1988, by Dean-Thomas, and a Joint Request For Approval Of Agreement filed on November 1, 1988, by Dean-Thomas and the other applicants in this case, Robert A. Jones (Jones) and College Town Radio Limited Partnership (College Town). The Mass Media Bureau filed its Consolidated Comments On Joint Requests For Approval Of Agreement, Petition For Leave To Amend And Motion For Summary Decision.

2. The three applications were designated for a comparative hearing to select a permittee to construct and operate a new FM radio broadcast station at Bridgewater, Virginia. *Hearing Designation Order*, DA 88-321, released April 8, 1988 (3 F.C.C. Rcd 2030), published at 53 Fed. Reg. 12591 (April 15, 1988) (the "HDO"). The parties filed timely their Notices of Appearance and the required hearing fees are reflected as having been paid to the Commission's Fee Section. 47 C.F.R. §1.221 (1987). The parties have agreed to a settlement which contemplates an award to Dean-Thomas' successor, WRDJ, Inc. The impediments to such an award are added disqualifying issues concerning alleged deficient financial qualifications and a related false certification. *See Memorandum Opinion and Order*, FCC 88M-2914, released September 6, 1988. The summary decision herein disposes of those issues in favor of Dean-Thomas.

3. Under the terms of the settlement, Dean-Thomas and College Town each will pay $25,000 to Jones ($50,000) in return for Jones' dismissal. Then, a newly formed consolidated entity organized by Dean-Thomas and College Town called WRDJ, Inc. will receive the grant.[1]

FINDINGS OF FACT

4. On September 6, 1988, the Presiding Judge added the following issues:

> A. To determine whether Dean-Thomas and/or its predecessor, Robert L. Dean, were financially qualified to receive a Commission construction permit at the time that an application was filed.
>
> B. To determine whether Dean-Thomas and/or Robert L. Dean misrepresented or lacked candor in certifying to the Commission that Dean-Thomas and/or Robert L. Dean was financially qualified to construct and operate.
>
> C. To determine whether Dean-Thomas and/or Robert L. Dean ever obtained the necessary reasonable assurance of financing for construction and operations as required by the Commission.
>
> D. To determine under the evidence adduced on these added issues whether Dean-Thomas is qualified to receive a Commission permit.

Memorandum Opinion and Order, FCC 88M-2914, *supra*.

5. Robert L. Dean filed his application on March 12, 1986. On April 24, 1986, Mr. Dean joined with Charles Thomas, Sr. to form the general partnership, Dean-Thomas. On June 9, 1988, Dean-Thomas produced documents under established discovery procedures. These documents stated that certain individuals (not financial institutions) were ready to loan funds to Dean-Thomas. In some instances, the purpose of the loan is indicated but not in all cases. The individuals making these commitments appear to be related to Robert L. Dean. Two of the documents reflect the date June 8, 1988, and three of the documents are not dated. They are dated over two years after Dean-Thomas filed their application and the documents fail to state that the purpose for the loan was to construct and operate a broadcast station at Bridgewater. Dean-Thomas offers the following explanation in Dean's Declaration which is appended to the Motion For Summary Decision.

6. Dean asserts that he had prepared a budget in 1986 wherein he estimated $116,000 for construction costs and three months' operations. Dean relied on his 15 years of personal experience as a broadcaster in making the estimates. Funding would come from his personal finances which are set forth in a Balance Sheet showing cash which exceeded his current liabilities by $10,000. Documents furnished as exhibits to the Dean Declaration establish that in 1986, Dean's Balance Sheet revealed a net

worth of $698,000 which is an amount well in excess of the $116,000 needed to construct and operate. This was the state of the applicant's financial condition in March 1986, when Dean was the sole applicant.

7. In April 1986, the Dean-Thomas general partnership was organized. In the amendment, Mr. Dean certified that Dean-Thomas was financially qualified. The partnership relied on a $30,000 loan from Luther F. Dean & Son and a $32,700 loan from Dean-O'Connel, Inc., a closely held corporation controlled by Mr. Dean. A personal loan in the amount of $57,300 will be made by Mr. Dean to the Dean-Thomas partnership.

8. More recently, in July 1988, Dean-Thomas obtained a bank loan commitment in the amount of $125,000. This commitment is evidenced by a letter from the First American Bank of Virginia dated July 18, 1988 (Exh. L. to MSD). A subsequent recomputation by Mr. Dean in October 1988 (updating 1986 costs and expenses) to reflect office equipment, legal fees and a proposed settlement payment to Jones of $25,000, increased the estimate to $121,768. Thereafter, the bank loan commitment was increased to $150,000 (Exh. N to MSD).

9. The Consolidation Agreement between Dean-Thomas and College Town provides that College Town will acquire a 49% voting stock interest in WHBG, Inc., licensee of Standard Broadcast Station WHBG, Harrisonburg, Virginia. College Town also will acquire a 49% interest in a new corporation, WRDJ, Inc. The agreement contemplates that the new Bridgewater FM station and WHBG(AM) will be operated jointly. Robert L. Dean will control 51% of WRDJ, Inc.'s voting stock. The instant amendment also withdraws Robert L. Dean's pledge to divest his interest in WHBG upon grant of the Dean-Thomas application. *See Ruarch Associates*, 103 F.C.C. 2d 1178 (Comm'n 1986) (settlement removes case from adversarial comparative posture and parties are relieved of divestment pledges).

DISCUSSION

10. Dean-Thomas concedes in its motion papers that the contemporaneous documentation with respect to its 1986 certification is less than precise. But Dean-Thomas has assembled all relevant documentation and presented a narrative account which are sufficient to meet the issues. Before filing his application, Mr. Dean, an experienced broadcaster, made reasonable estimates of three months' operating costs at $33,350 and construction costs in the range of $72,900 to $82,900. At that time Mr. Dean intended to self-finance with his calculated net worth at $698,000 as of February 1986. He had current liabilities of only $8,229. He had cash on hand totaling $18,000 and notes receivable totaling $545,300 which were paid monthly and which were current.[2] Mr. Dean was prepared to discount the notes and use the proceeds to cover the costs or rely on the monthly payments.

11. The Review Board has recently addressed the situation when a party has insufficient documentation to show all the elements of financial ability. *Northampton Media Associates*, 3 F.C.C. Rcd 5164 (Review Bd 1988). In that case, the applicant had based financial certification on a "belief" that two equity owners had sufficient assets but there was not contemporaneous documentation to support that conclusion. There the two equity principals had not submitted a financial statement or other documentation evidencing their financial commitment because they viewed the commitment as one being made to themselves and not to some third party. *Id.* at 5166. A reconstructed net worth statement was received in evidence at the trial and it established a net worth of $615,959. *Id.* The Review Board framed the issue to be whether the applicant had made "deliberate misrepresentations regarding its financial qualifications in executing its financial certification." *Id.* at 5167. The Review Board also noted:

> [N]ot only were net liquid assets on hand - - -, their total net worth was such that it would be reasonable to conclude that the necessary funding could have been realized.

Id. Compare Kaye - Smith Enterprises, 98 F.C.C. 2d 670 (Review Bd 1984) (ownership of non-liquid assets several times value of cash needed provides a reasonable assurance).[3] The Review Board and the Commission have declined to disqualify an applicant which lacks documentation when it certifies in Form 301 "if there was other reasonable and reliable evidence that funds would be available." *Id.* at 5167. Since Mr. Dean was a sole-proprietor when he certified in March 1986, the evidence now establishes that he had a reasonable assurance to justify certification. The funding improved with the general partnership formed in April 1986 when Mr. Dean certified that Dean-Thomas was financially qualified. Current financial ability is clearly established by the 1988 bank commitment for $150,000.

12. The Commission's rules provide that in considering a motion for summary decision:

> The party filing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the presiding officer, that there is no genuine issue of material fact for determination at the hearing.

47 C.F.R. §1.251(a)(1). As the moving party, Dean-Thomas has the burden of establishing that summary decision would be appropriate based on its papers. *Summary Decision Procedures*, 34 F.C.C. 2d 485, 487-88 (1972). For reasons stated below, Dean-Thomas is found to have sustained this burden.

13. In light of the conclusive evidence found in the Dean Declaration and allied exhibits there is no genuine issue of material fact that remains to be resolved. *See also* Bureau's Comments at 3-6 (Dean-Thomas is entitled to summary decision on the financial qualification and certification issues). Therefore, summary decision is appropriate here.

THE AMENDMENTS

14. On November 8, 1988, Dean-Thomas submitted two proposed amendments in furtherance of the settlement and in furtherance of resolving the issues. One of the amendments effects the merger between Dean-Thomas and College Town and discloses the formation of a new corporate entity to receive the grant, WRDJ, Inc. The other amendment would up-date the documentation con-

cerning Dean-Thomas' financial certification and the related reasonable assurance. In both instances, cause has been shown for their acceptance.

SETTLEMENT

15. The statutory standard to be applied in accepting or rejecting a settlement proposal provides:

> The Commission shall approve the agreement only if it determines that (A) the agreement is consistent with the public interest, convenience or necessity, and (B) no party to the agreement filed its application for the purpose of reaching or carrying out such agreement.

Communications Act of 1934, as amended, §311(c)(3). *See Oak Television of Everett, Inc., et al.*, 93 F.C.C. 2d 926, 52 Radio Reg. 2d (P&F) 995 (Review Bd. 1983).

16. In this case, with the issues resolved in its favor, Dean-Thomas' successor is qualified at this time to construct and operate a FM station. The Joint Request was filed timely in accordance with §73.3525. The parties have represented that their applications were not filed for the purpose of reaching or carrying out a settlement agreement and that the agreement is in the public interest. Also, the Bureau has no objection to approving the settlement. Therefore, it is determined that the parties have complied with §73.3525(a)(1) and (a)(2) of the Commission's rules.

17. There has been compliance with the local publication requirements of the Commission's rules. 47 C.F.R. §73.3594(g). Commission resources will be conserved by the termination of this case prior to hearing. In addition, the public interest will be served by approval of this agreement which will eliminate the need for protracted litigation and the corresponding utilization of resources, and its acceptance now ensures that a new FM service will be delivered to Bridgewater, Virginia at an earlier date. Accordingly, it is appropriate that the proposed settlement be accepted.

RULINGS

IT IS ORDERED that the Motion For Summary Decision filed on November 8, 1988, by Robert L. Dean & Charles Thomas, Sr. d/b/a Dean-Thomas Communications IS GRANTED and the designated issues regarding financial certification ARE RESOLVED in the applicant's favor.

IT IS FURTHER ORDERED that the Petitions For Leave To Amend filed on November 8, 1988, by Robert L. Dean & Charles Thomas, Sr. d/b/a Dean-Thomas Communications ARE GRANTED and the amendments ARE ACCEPTED.

IT IS FURTHER ORDERED that the Joint Request For Approval Of Agreement IS GRANTED and the proposed settlement IS ACCEPTED.

IT IS FURTHER ORDERED that the application of Robert A. Jones (File No. BPH-860317NG) IS DISMISSED with prejudice.

IT IS FURTHER ORDERED that the application of the merged party, College Town Radio Limited Partnership (File No. BPH-860371NH), IS DISMISSED with prejudice.

IT IS FURTHER ORDERED that unless an appeal from this Summary Decision is taken to the Commission, or unless the Commission reviews this Summary Decision on its own motion in accordance with 47 C.F.R. §1.276 of the Commission's rules, the application of Robert L. Dean & Charles Thomas, Sr. d/b/a Dean-Thomas Communications (File No. BPH-860312MR) to construct and operate a new FM station on Channel 286A at Bridgewater, Virginia IS GRANTED to the successor applicant, WRDJ, Inc., and this proceeding IS TERMINATED.[4]

FEDERAL COMMUNICATIONS COMMISSION

Richard L. Sippel
Administrative Law Judge

FOOTNOTES

[1] Under the consolidation, College Town will have a 49% interest. Since there are no indicia that College Town will exercise *de facto* control, there is no need to address here the disqualifying issues added against College Town. 47 C.F.R. §73.3555 at Note 2(b). *Memorandum Opinion and Order*, FCC 88M-2926, released September 7, 1988. *See Allegan County Broadcasters, Inc.*, 83 F.C.C. 2d 371, 373 (1980).

[2] The notes were negotiated in connection with a sale of a radio station and they were secured with station assets. *See* letter from First American Bank stating that in 1986 Mr. Dean could have obtained a $125,000 personal loan based on these notes (Exh. H to Dean Declaration).

[3] Kaye-Smith was a closer call then this case. There the issue concerned real property valued at $300,000 which was relied on to meet a $200,000 cash need.

[4] This Summary Decision disposes of the case in its entirety. It shall become effective 50 days after its public release if exceptions are not filed within 30 days, unless the Commission elects to review the case on its own motion. 47 C.F.R. §1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

OMAHA TV 15, INC. Omaha, Nebraska	**BC Docket No. 80-691** File No. BPCT-790629KG
CHANNEL 15/OMAHA Omaha, Nebraska	**BC DOCKET NO. 80-693** File No. BPCT-790409KE
MID-AMERICA BROADCASTING, INC. Omaha, Nebraska	**BC DOCKET NO. 80-694** File No. BPCT-791026KN
KOPLAR COMMUNICATIONS, INC. Omaha, Nebraska	**BC DOCKET NO. 80-695** File No. BPCT-790703KF
FAMILY TELEVISION, INC. Omaha, Nebraska	**BC DOCKET NO. 80-696** File No. BPCT-790627KE

MEMORANDUM OPINION AND ORDER

Adopted: November 17, 1988; Released: December 19, 1988

By the Commission: Commissioner Quello concurring and issuing a statement.

1. In an initial decision, the presiding officer granted the application of Mid-America Broadcasting, Inc. for a construction permit for a new UHF television station in Omaha, Nebraska. 102 FCC 2d 892 (Admin. L.J.). The Review Board affirmed that disposition. 102 FCC 2d 875 (Rev. Bd. 1985).

2. The Commission now has before it an Application for Review filed on January 6, 1986 by Channel 15/Omaha; an Application for Review filed on January 6, 1986 by Koplar Communications, Inc.; and an Application for Review filed on January 6, 1986 by Family Television, Inc. No Application for Review having been filed by Omaha TV 15, Inc., the Board's denial of that application is final. The Commission also has before it an Opposition to Applications for Review filed on February 13, 1986 by Mid-America; a Partial Opposition to Applications for Review filed on February 13, 1986 by Family; a Motion to Reopen the Record filed on November 13, 1986 by Family; an Opposition to Motion to Reopen the Record filed on December 11, 1986 by Mid-America; and a Reply to Opposition to the Motion to Reopen the Record filed on January 7, 1987 by Family.

I. REPRESENTATION REGARDING TRANSFER OF STOCK

3. Mid-America represented in an amendment filed on May 27, 1980 that Larry D. Hudson held 88 percent of its stock and that the only other stockholders were Larry P. Thompson and Dean M. Coe, each with a six percent holding. Mr. Hudson later testified that he had increased his holding to 88 percent in April or May of 1980 by acquiring 1160 shares from his brother, Cale W. Hudson, and 40 shares from one Teri L. Tharp. Tr. at 888, 897. According to Family's motion to reopen, new evidence demonstrates that Mid-America and Larry Hudson falsely portrayed the applicant's ownership structure in representing that Larry Hudson had acquired Ms. Tharp's shares. Family refers to an attached affidavit dated November 6, 1986, wherein Teri Tharp avers that she still holds the 40 shares of Mid-America stock that were originally issued to her, never having surrendered or transferred them.

4. Family asserts, moreover, that Mid-America and Larry Hudson had a motive for falsely representing that Hudson had acquired Teri Tharp's shares. Family points out that any increase in Larry Hudson's ownership would expand Mid-America's integration credit because he proposed to be involved in station management. Further, Family asserts that, because Mid-America was competing against an applicant that had significant advantages in local ownership, minority enhancement, and diversification, Mid-America could not have hoped to prevail except by presenting an extremely strong integration showing. Family contends that the evident misrepresentation of Larry Hudson's ownership percentage has a material bearing on Mid-America's character qualifications, and that this alleged malfeasance is part of a pattern of concealment and deception, referring to certain reporting failures that were discussed in the decision below. (The Review Board concluded that Mid-America's reporting failures were not, by themselves, of such significance as to warrant further evidentiary hearings. 102 FCC 2d at 885-87 ¶¶ 16-18.)

5. In *Valley Telecasting Co. v. FCC*, 336 F.2d 914, 917 (D.C. Cir. 1964), the Court of Appeals held that orderliness, expedition and finality in the adjudicative process is relevant to the public interest; that, in considering post-hearing motions calling for further proceedings, the Commission must weigh the interest in preserving finality against the interest to be served by further litigation; and that it is therefore proper for the Commission to apply a more exacting standard in weighing the substantive sufficiency of belated motions for such relief than in ruling on timely ones. *See also WEBR v. FCC*, 420 F.2d 158, 166 (D.C. Cir. 1969); *Kidd v. FCC*, 302 F.2d 873, 874 (D.C. Cir. 1962); *Beep Communications Systems, Inc.*, 88 FCC 2d 1303, 1309 ¶ 14 (1982). We conclude that Family is not entitled to the relief it seeks.

6. Applicants have a duty to raise any pertinent allegations concerning their opponents' proposals as soon as possible, preferably before the hearings begin. *High Sierra Broadcasting, Inc.*, 56 RR 2d 1394, 1396 ¶ 7 (1984). Moreover, where the record in the proceeding has already been closed, as in this case, petitioners must show that their contentions are based on newly discovered evidence that could not, through the exercise of due diligence, have been discovered earlier and that the new evidence, if true, would affect the ultimate disposition of the proceeding. *American Int'l Development, Inc.*, 86 FCC 2d 808, 811 ¶ 5

(1981). *See also Southeast Arkansas Radio, Inc.*, 61 FCC 2d 72, 73-74 ¶ 4 (1976). Viewed in light of these standards, Family's motion to reopen the record must be denied.

A. *Due Diligence*

7. Not only could the matters now raised by Family have been considered during the hearing in this proceeding, they indeed were. In transcript excerpts attached to Family's Motion, counsel for one of the other applicants indicated in his examination of Mr. Hudson that he wanted to make sure that the facts about the ownership of Mr. Hudson's applicant were set forth in the record, Tr. at 886, and that he wanted to determine what transactions had occurred with respect to the stock. Tr. at 893. Mr. Hudson testified at length about his acquisition of stock from Cale Hudson and Ms. Tharp, and specifically described the basis for the transfer of stock from Ms. Tharp as being part of an overall disassociation of business interests held by Cale and Larry Hudson. Tr. at 887-894, 896-901. As part of this same examination, Mr. Hudson was closely questioned about the amount and percentage of his total interest in the applicant.

8. Under these circumstances, Family had clear notice and ample opportunity to explore all pertinent aspects of Mr. Hudson's ownership interests in Mid-America. Family has given no persuasive explanation of why it did not investigate or attempt to investigate these matters at that time. The record need not be reopened for evidence easily discoverable initially and only deemed crucial "when seen from the highland of hindsight." *Guinan v. FCC*, 297 F.2d 782, 787 (D.C. Cir. 1961). *See also WEBR v. FCC*, 420 F.2d at 165-66.

B. *Decisional Significance*

9. Even if the untimeliness of Family's contentions were to be ignored, Family has made no showing sufficient to affect the ultimate disposition of this proceeding. The interest claimed by Ms. Tharp would amount to only 40 shares of the total ownership in Mid-America. Both the ALJ and the Review Board concluded that Mid-America was entitled to a substantial integration preference based on the quantitative superiority of its proposal to integrate its controlling owner, Mr. Hudson, into station management on a full-time basis. R.B., 102 FCC 2d at 935 ¶ 98; I.D., 102 FCC 2d at 880-82 ¶¶ 9-11. In this connection, Family has not demonstrated that a reduction in the percentage of Mid-America's integration proposal based on the interest claimed by Ms. Tharp would alter the comparative standing of the applicants. Based on circumstances not relevant to Family's contentions, Mid-America's credit for Mr. Hudson's integration was determined to be 83 percent for comparative purposes. 102 FCC 2d at 913 n.24. A change of 40 shares in the ownership of Mid-America would still leave it with at least 81 percent credit for integration. No other applicant is entitled to credit for even 50 percent full-time integration. 102 FCC 2d at 881 ¶ 9. Thus, even if it were ultimately determined that Ms. Tharp does have a 40 share interest in the applicant, that determination would not affect the substantial integration preference awarded below or otherwise alter the ultimate comparative standing of the applicants under the circumstances of this case.

10. There is no showing that Larry Hudson's claims of ownership during the hearing in this proceeding were made in bad faith or with an intent to deceive. Mid-America is a small, closely held corporation, and the record indicates that Ms. Tharp's stock was held in conjunction with Cale Hudson's original ownership interest. Larry Hudson testified that he acquired Ms. Tharp's shares pursuant to an unwritten agreement, the object of which was to disassociate his corporate interests from his brother's, and by the terms of which he was to transfer his interest in another corporation to his brother and was to receive both the latter's 29 percent interest and Ms. Tharp's 1.4 percent interest in Mid-America. Tr. at 896-900. Evincing confusion as to what, if any, consideration Ms. Tharp was to receive for her shares, Larry Hudson testified that he had not dealt directly with her in this regard but had been given to understand that she was willing to surrender her interest in Mid-America whenever his brother ended his affiliation with it. Tr. at 900-901. Mid-America submitted a corroborating affidavit with its Opposition to the instant motion, wherein Larry Hudson's brother avers, among other things, that at a meeting held in May 1980 "a majority" of Mid-America's directors and stockholders "determined that the stock ownership of the company was revised to transfer Cale Hudson's and Terri Tharp's ownership to Larry Hudson."

11. Although Tharp alleges that she did not "participate in" any agreement between the Hudson brothers for a division of assets, she does not aver that she ever said anything to Larry Hudson that would have given him cause to doubt that she was willing to surrender her stock pursuant to the arrangement that he and his brother contemplated, nor does she aver that she gave him any overt indication prior to the time when he testified that she considered the stock to be still hers. The present record, therefore, provides no basis for a finding other than that Larry Hudson relied on an undertaking by his brother to deliver over Tharp's shares along with his own, without consulting Tharp himself concerning her intentions.

12. It is reasonable to infer from the existing record that Larry Hudson believed that he had taken title to those shares even if, in fact, he had not acquired them. Family has produced no averment from either of the two accessible witnesses with personal knowledge of relevant circumstances (Teri Tharp and Cale Hudson) that affords any clear indication that Larry Hudson knew the truth to be other than as he depicted it. Given the small size of the stock interest in question and the serious consequences that could arise for Larry Hudson from a misrepresentation of this nature, there is an inherent implausibility about Family's contentions. Considering this circumstance, and considering that there is no factual basis for a claim of bad faith or deceit, we conclude that Family's claim of a pattern of concealment and deception is without merit and that no reason exists to pursue this matter further. *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1211 ¶ 61 (1986).

13. We therefore hold that Family has not made any showing that would warrant our reopening the record at this late stage of the proceeding and that the public interest will be best served by our resolution of this case on the basis of the present record.

II. DAILY MANAGEMENT PARTICIPATION OF STATION OWNERS

14. Channel 15 raises a significant issue regarding the way the Commission evaluates integration credit for a manager who will not be physically present at the proposed station management on a daily basis. John Tyler owns 51 percent of Channel 15, a Texas partnership. He proposes to work at the television station as its chief executive officer three days per week for a total of 30 hours. The ALJ found that Tyler "plans to hire people for all major line positions." I.D., 102 FCC 2d at 932 ¶ 93. On days when Tyler is not working at the station in Omaha, he will be in Dallas, Texas, where he resides.

15. The ALJ awarded 51 percent "substantial" integration credit to Channel 15 for Tyler's proposal. *Id.* The ALJ ruled that Tyler's residence in Dallas rather than Omaha did not create a bar to awarding Channel 15 part-time integration credit for Tyler's 30 hours per week. Citing as authority *Greater Wichita Telecasting, Inc.*, 90 FCC 2d 1046 (Rev. Bd. 1982), the ALJ wrote: "Local residence is not a prerequisite for an award of part-time integration credit. In addition, while full-time integration credit requires devotion to the station of substantial amounts of time on a daily basis, that is not necessary in the case of part-time proposals." 102 FCC 2d at 932 ¶ 93.

16. The Review Board reversed the ALJ's award of integration credit to Channel 15. Quoting footnote 2 of *Bay Television, Inc.*, FCC 85-58 at 1 n.2 (released Mar. 25, 1985), the Board refused to award Channel 15 any integration credit at all, because it said that "the Commission held that integration credit would not be given where an owner 'did not propose to work at the station on a *daily* basis.'" R.B., 102 FCC 2d at 881 ¶ 10 (emphasis added). The Board emphasized that Tyler "will live in Dallas, Texas and spend only three days per week at the Omaha station rather than participate daily as required to receive integration credit." *Id.*

17. Channel 15 argues that the Review Board's decision in effect has created a "daily service" standard that would "virtually require local residence to enable compliance." Channel 15's Application for Review at 7. In Channel 15's view, such a standard would harm the public interest:

> The Board's new daily service standard will forestall participation by individuals who can best function on a part or substantial-time basis and who would focus their participation in discrete time blocks over less than the five working days of the week. At a time when employment patterns have become more flexible, the inflexible ruling is an anachronism which will only embarrass the Commission in this and future contexts. Therefore, to the extent it is not based on *Bay Television*, the Board's decision raises a novel issue of policy regarding the definition of daily service which warrants Commission review.

Id. at 7. Consequently, argues Channel 15, "the Board's strained holding which denies Channel 15/Omaha any integration credit for the time John Tyler will devote to the management of its proposed station, based on a wisp of a footnote, should be reversed." *Id.* at 8.

18. This issue requires us to reexamine a facet of our longstanding policy of rewarding the integration of ownership into management. Our starting point is the *1965 Policy Statement*, which contains several sentences that emphasize the Commission's expressed preference in 1965 for the owners of a broadcast station to be involved in the station's daily management:

> It is inherently desirable that legal responsibility and day-to-day performance be closely associated. In addition, there is a likelihood of greater sensitivity to an area's changing needs, and of programming designed to serve these needs, to the extent that the station's proprietors actively participate in the day-to-day operation of the station . . . . To the extent that the time spent moves away from full time, the credit given will drop sharply, and no credit will be given to the participation of any person who will not devote to the station substantial amounts of time on a daily basis.

1 FCC 2d at 395. It was this last sentence from the *1965 Policy Statement* on which the Commission relied in footnote 2 of its *Bay Television* decision. In particular, the Commission said that because the applicant's "owners did not propose to work at the station on a daily basis[,] . . . . no integration credit is warranted for these principals' proposal." *Bay Television*, FCC 85-58 at 1 n.2. Channel 15 argues: "This statement, standing alone, does not establish that principals of an applicant must be present each and every day to earn integration credit for substantial commitments, since the statement must be assessed in the context of the case." Channel 15's Application for Review at 6.

19. To the extent that footnote 2 of *Bay Television* is interpreted as a hard and fast rule of law, it lacks a sufficient legal rationale to explain its derivation. Consequently, there is a genuine ambiguity here, the source of which becomes apparent when one examines the text from the initial decision in *Bay Television* that the Commission subsequently cited in footnote 2 of its order in that case. The initial decision in *Bay Television* concluded that the principals in question "will not move to the [proposed license] area, *nor* will they work on a daily basis." *Bay Television, Inc.*, 95 FCC 2d 190, 220 ¶ 112 (I.D. 1983) (emphasis added). Thus, the ALJ in *Bay Television* suggested that daily management of station affairs was conceptually distinct from the question of whether the manager proposed to reside full-time in the same community as the station. On the other hand, the Commission's footnote 2 carried quite a different connotation. Immediately after citing the page of the ALJ's initial decision on which the quotation above appears, the Commission said: "Here, Bay's owners did not propose to work *at the station* on a daily basis." FCC 85-58 at 1 n.2 (emphasis added). Thus, the Commission seemed to equate proposing to manage a station on a daily basis with proposing *physical presence* at the station each day of the work week. In short, footnote 2 of the Commission's order in *Bay Television* raises, but does not answer, the following question: Is daily physical presence at the station necessary to be granted integration credit – or is daily management involvement merely required, which might occur even when the manager is in another city and therefore not physically present at the station?

20. We believe that the second interpretation will better serve the public interest. At a minimum, "management" consists of something far more than just calling oneself a manager and being physically present behind a desk at a television station. At the same time, there is difficulty in

having the FCC attempt to define what constitutes "good" management. The Commission is reluctant to impose on applicants any one view of what constitutes a well managed broadcast venture. As we have previously stated, "Having no particular expertise in finance or business management, we are reluctant to second-guess an applicant's business judgment -- so long as it is, in fact, a good faith business decision . . . ." *Victory Media, Inc.*, 3 FCC Rcd 2073, 2075 ¶ 19 (1988).

21. Therefore, although integration credit depends upon a principal's presence at the station on a regular, periodic basis, we believe that the requirement of daily physical presence for broadcast managers would be highly intrusive on the freedom of entrepreneurs to make their own business decisions, without necessarily resulting in better managed stations. As a general rule, we must presume that an individual manager knows better than the Commission how to most productively manage a radio or television station. Nor can we ignore that technological advances in communications, transportation, information processing, and office automation between 1965 and 1988 have made it more feasible for a manager to manage a broadcast station on a day-to-day basis without the need for physical presence at the station every day. We should acknowledge that we lack the omniscience to determine that a licensee will better serve the public interest by spreading 30 hours of work over five business days rather than three.[1]

22. Apart from unnecessarily interfering with the business judgments of broadcasters, we are concerned that *Bay Television*'s "daily service" rule could produce anomalous results. Tyler would be eligible for integration credit if he proposed to work only 20 hours per week, as long as he spread those 20 hours over five days during the week -- for example, in five blocks of four hours each. But he would *not* be eligible for any integration credit if he proposed to spread those 20 hours over four days in five-hour chunks -- or if he continued to work 20 hours over five days but worked out of his home one day a week. Because we no longer find that the former would provide a manager with greater sensitivity to an area's needs and of programming designed to meet those needs, *see 1965 Policy Statement*, 1 FCC 2d at 392, we will no longer automatically give preferential weight to the former.

23. Following the "daily service" rule in this case would also risk an arbitrary result. In Channel 15's actual situation, Tyler proposes to work 30 hours per week rather than just 20 hours. He proposes to spread those 30 hours over three days. Under the "daily service" rule, Tyler would get no integration credit at all -- even though he *would* get integration credit under a proposal to work only 20 hours per week, provided that he worked at least a little each day. The Commission does not have any evidence to establish that four hours spent on each of five work days would produce management decisions at a television station that better serve the public interest than ten hours spent on each of only three days each week. While we continue to believe that full time work warrants greater credit than part-time work, we will not require the part-time work to be spread over a minimum of 5 days each week. Accordingly, we conclude that the Board's decision must be reversed to the extent that it denied Channel 15 any integration credit at all for Tyler's proposed management participation.

24. For these reasons, we reverse the Board and reinstate the ALJ's original determination that Channel 15 is entitled to integration credit for the 30 hours that Tyler proposes to work over a three-day period each week. As set forth below, it is clear to us from the record that our reversal of the Review Board on this issue will not change the final determination that Mid-America is the comparatively superior applicant in this case. Consequently, we need not remand this proceeding nor modify the Board's determination as to the applicant most qualified to be granted this new license to serve Omaha.

III. COMPUTING "PART-TIME" INTEGRATION

25. On our own motion, we raise an additional issue that is related to Channel 15's argument that it should receive "substantial" integration credit. Specifically, we announce here a new method by which to compare competing integration proposals in licensing proceedings. We believe that this new method will make anomalous integration results less likely to arise and should provide an easier and more precise method for comparing competing applicants.

26. In the past, the Commission has suggested that there are only two types of integration proposals: full-time (at least 40 hours per week) and part-time (at least 20 hours per week). *E.g., 1965 Policy Statement*, 1 FCC 2d at 395; *Midwest Broadcasting Co.*, 70 FCC 2d 1489, 1494-95 ¶ 9 (Rev. Bd. 1979), review denied, FCC 79-397 (released June 21, 1979). Thus, the Commission has given only part-time integration credit to proposals to be integrated 20-39 hours per week. In addition, the Review Board has awarded more comparative credit for proposals to be integrated 30-39 hours per week than for proposals to be integrated only 20 hours per week. *See, e.g., Webster - Baker Broadcasting Co.*, 88 FCC 2d 944, 953 ¶ 20 (Rev. Bd. 1982). This area of Commission policy has become far more complicated than it needs to be.

27. Part of the problem of computing integration credit is that the Commission has turned a continuous variable (how many hours per week someone proposes to work) into a discrete variable (whether one will be working "full-time" or "part-time" or maybe even "part-time" in substantial amount). It would be much simpler to use a sliding scale, just as the Commission does in giving integration credit generally. For part-time integration the Commission could divide the number of hours to be worked by 40 hours per week, and then multiply this fraction by the applicant's percentage of ownership integration into management. The resulting number would provide immediate comparability across applicants with differing degrees of owner management. For example, a 75 percent owner who proposed to work 36 hours per week would have an integration score of .68 (that is, (36/40) x .75). By comparison, a 90 percent owner who proposed to work only 28 hours per week would score .63 (that is, (28/40) x .90). The ownership shares of other managers could be calculated in a similar fashion and totaled for a particular applicant. In the simple example given here, the first applicant would have a better integration proposal, but not by very much. This method would obviate the rather ambiguous and arbitrary line drawing now conducted in comparative proceedings.

28. This straightforward methodology has not been used in the last seven years after the Review Board expressly rejected it in a terse footnote in *Van Buren Community Broadcasters, Inc.*, 87 FCC 2d 1018, 1022 n.1 (Rev. Bd. 1981). The Board wrote:

> In the Initial Decision, [the applicant] was credited with 39% integration computed as follows: 40% (integrated stock ownership) x 75% (for 30-hr week proposed) = 30%, plus 18% (integrated stock ownership) x 50% (for 20-hr week proposed) = 9%, for a total of 39% integration. This mathematical method, although beguiling in its ease of application and apparent precision, overemphasizes the importance of part-time integration in relation to full-time integration.

Id.

29. The Board's criticism evidently stems from its concern that a station whose owner works 40 hours per week is, in its view, *more than twice as likely* to deliver "quality" programming than a station whose owner works only 20 hours per week. Stated differently, we understand the Board to believe that the relationship between the number of hours per week worked by owner-managers and the quality of service to the public is not a linear function. The Board stated:

> Quantitative credit for integration decreases more sharply than proportionally with a corresponding decrease in the number of hours of participation per week . . . . Hence, we specifically disapprove further use of this mathematical method.

Id. (citation omitted). The Review Board's conjecture in *Van Buren* may have a reasonable basis. It is plausible that until a manager devotes a certain threshold number of hours on a weekly basis to the management of a station, his investment of time will not be particularly productive. Nonetheless, it does not follow that a computational approach to part-time integration must be rejected. Rather, the test should in such a case be specified differently to take the nonlinearity into account.

30. Specifically, the Commission can address the Board's concern about nonlinearity by adopting an approach to computing part-time integration credit that is analogous to the Hirschman-Herfindahl Index (HHI).[2] To extend the earlier example, the 75 percent owner proposing to work 36 hours per week would score as follows: $(100 \times (36/40))^2 \times .75 = 6075$. The 90 percent owner proposing to work 28 hours per week would score significantly less: $(100 \times (28/40))^2 \times .90 = 4410$. Under this approach, the relative inferiority of the second applicant's reduced management participation would be given greater relative significance under the HHI approach than under the simple linear approach that the Board criticized in *Van Buren*.

31. Such an approach would be far less ambiguous than the Commission's current practice of evaluating the integration significance of part-time management. As a consequence, we believe it would, on the margin, reduce for both the Commission and applicants the transactions costs associated with comparative licensing proceedings. This new method eliminates the need for crude categories such as "part-time" and "substantial" integration. It also enables the Commission to summarize the number of hours that an applicant proposes to participate in station management each week, once the 20 hour per week threshold requirement is met, in a single statistic that also accounts for the percentage degree of ownership integration into management. Because we expect these advantages to reduce somewhat the imprecision and uncertainty in broadcast licensing proceedings, we believe that this new method for computing integration credit will help the Commission to provide service to the public in the most efficient, expeditious manner possible. This weighting should, moreover, address the precise misgivings that originally caused the Review Board in footnote 1 of *Van Buren* to reject a computational approach to evaluating integration credit. Of course, if experience proves that this weighting is inappropriate in some respect, the Commission need merely revise the formula for computing credit. Therefore, we direct the Review Board and the ALJs to begin using this approach when comparing either full-time or part-time integration proposals.

32. In this case, for example, Channel 15 is 51 percent integrated into management, and Tyler proposes to work 30 hours per week. Therefore, Channel 15's HHI is $(100 \times (30/40))^2 \times .51 = 2869$. We can also compute HHIs for the other applicants. Mid-America proposes full-time management participation by its 83 percent owner: $(100 \times (40/40))^2 \times .83 = 8300$. Family proposes full-time integration of its 10 percent owner and 20 hours per week of integration for its 21.75 percent owner: $[(100 \times (40/40))^2 \times .10] + [(100 \times (20/40))^2 \times .2175] = 1000 + 544 = 1544$. Omaha TV proposes full-time integration of its 15 percent owner: $(100 \times (40/40))^2 \times .15 = 1500$. Finally, Koplar does not propose to be integrated into management at all: $(100 \times (0/40))^2 \times 0 = 0$. Thus, Mid-America still emerges as the comparatively superior applicant in terms of integration.

IV. THE COMPARATIVE SIGNIFICANCE OF PAST SUCCESS IN THE BROADCAST MARKETPLACE

33. Koplar contends that the Commission should consider Koplar's successful operation of existing broadcast stations as a favorable comparative factor. Koplar maintains that its other stations have been exceptionally successful in drawing audiences and that such success is the best measure of how well a commercial station is serving the public interest.

34. Koplar refers to information about the performance of television stations in St. Louis and Sacramento under its proprietorship. According to an exhibit that it proffered at the hearing, Koplar's St. Louis station, KPLR-TV, "had become the number one rated independent news station in the United States, ranking among the top five independent stations in the country overall. According to the July 1981 Arbitron survey, KPLR had a 17% audience share in the St. Louis ADI, and a net weekly circulation of 931,000 -- compared to 926,000 households for the local NBC affiliate." Koplar's Application for Review at 3. In Sacramento, Koplar similarly argues, "its then recently acquired UHF television station KRBK-TV . . . increased its net weekly circulation from 45,000 television households in February of 1981 to 226,000 television households in July of 1981 following acquisition in April of that year." *Id.* at 3-4. Koplar alleges that its success with these stations is due to use of the most modern technology and "dedication to the public service as

evidenced by its news and public affairs programming." *Id.* at 3. Koplar asserts that it would bring to the Omaha television market the "same abilities and resources which have enabled its stations in St. Louis and Sacramento to succeed." *Id.* at 4.

35. The ALJ rejected that exhibit with the comment that "no threshold showing of past broadcast record" had been made and that Koplar could receive no credit for past performance, in any case, because none of its principals would engage in daily management of the proposed station in Omaha. Tr. at 173. The Review Board, 102 FCC 2d at 885 ¶ 15, affirmed the ruling for the reason that the showing is not of "the type . . . necessary to receive a preference for an unusually good past broadcast record" under the *1965 Policy Statement*, 1 FCC 2d at 398.

36. While conceding that evidence of marketplace results has not previously been considered, Koplar argues that the Commission ought not to reject its exhibit because of that circumstance:

> Koplar submits that things have changed over the past twenty years, and that the Commission's perceptions of reality have changed as well. The marketplace is now deemed to be the prime reflector of how well a station is serving the public interest and, according to marketplace information, Koplar's stations have done exceeding[ly] well. The marketplace success of those stations should be relevant under the standard comparative issues as predictive of the performance of the new facility sought by Koplar.

Id. at 4-5.

37. Aside from the mandate in 47 U.S.C. § 307(b) to promote "fair, efficient, and equitable distribution of radio service to each of [the several states and communities]," broad discretion is given to the Commission for determining which of a set of mutually exclusive applications it would best serve the "public interest, convenience, and necessity" to grant. The *1965 Policy Statement*, which essentially restates doctrine that the Commission had gradually developed through *ad hoc* rulings, identifies two primary public interest objectives to be served in choosing between proposals to provide broadcast service to the same community: "maximum diffusion of control of the media of mass communications" and "best practicable service to the public." 1 FCC 2d at 394. "Best practicable service to the public" means service that best "meets the needs of the public in the area to be served, both in terms of those general interests which all areas have in common and those special interests which areas do not share." *Id.*

38. One of the factors that the *1965 Policy Statement* mentions as of possible relevance in deciding which among competing applicants would best meet needs for broadcast service is the past broadcast records of principals. As defined, the term "past broadcast record" refers to experience of an applicant's principal (whether or not that principal would be integrated into management) consisting of significant participation in operation of a broadcast station in which he or she held ownership. *Id.* at 398. (Previous broadcast experience without ownership, in contrast, is deemed relevant only if claimed by an integrated principal and is considered to be of minor importance. *Id.* at 396.) An ordinary past broadcast record is immaterial, however, according to the *1965 Policy Statement*; but one that is either "unusually good or unusually poor" is a factor of substantial importance. *Id.* at 398. The Commission said that in order to determine whether a record was unusually good it would look for evidence of "unusual attention to the public's needs and interests, such as special sensitivity to an area's changing needs through flexibility of local programs designed to meet those needs." *Id.* Once having determined that a principal's "past broadcast record" is unusually good or poor, the Commission would then consider the causes of that performance and the extent to which they would be present in the proposed operation. *Id.* An extraordinary record compiled while the principal fully participated in station operation would not be accorded "full" credit, for instance, if that principal would not have similar involvement in operation of the proposed station. *Id.*

39. Bids for credit for unusually good past broadcast records have seldom met with success. The Review Board gave indication soon after the adoption of the *1965 Policy Statement* that attempts to prevail on that ground would be disfavored, by ruling in purported reliance on the *Policy Statement* that an applicant would have to make a satisfactory "threshold showing" that a past broadcast record is unusually good or poor before adducing evidence on point. *Pleasant Broadcasting Co.*, 19 FCC 2d 964, 965 ¶ 2 (1969). The Commission ratified that procedure in *Gilbert Group, Inc.*, 49 RR 2d 1081, 1082 ¶ 4 (1981). *See also Knoxville Broadcasting Corp.*, 103 FCC 2d 669, 689-90 ¶¶ 25-26 (Rev. Bd. 1986).

40. Koplar's bald and self-serving assertion about its "dedication to public service as evidenced by [the] news and public affairs programming" of its existing stations is not probative. News and public affairs programming, while obviously commendable and an important means of serving the needs of the broadcast community, is not out of the ordinary. Koplar's market ratings showing is not sufficient to make the requisite threshold showing, either. The exhibit in question reportedly discloses how Koplar's stations in St. Louis and Sacramento each fared in drawing audiences in just a single month in 1981. Although it seems, at least, that the St. Louis station was unusually successful in attracting audiences in that one month, we are dubious that results from so short a period of time are representative of longer-term performance. It does not appear from Koplar's description of it, moreover, that the exhibit affords any basis for determining to what extent any unusual success in the performance of its existing stations is due to the integration of principals or other factors that would not be replicated in operation of the prospective station that Koplar's current application proposes. *See* the *1965 Policy Statement*, 1 FCC 2d at 398. In sum, we are not persuaded that the information contained in the exhibit affords a sufficient basis for awarding Koplar credit for an unusually good past broadcast record.

V. ORDERS

41. ACCORDINGLY, IT IS ORDERED That the Motion to Reopen the Record filed November 13, 1986 by Family Television, Inc. IS DENIED.

42. IT IS FURTHER ORDERED That the Applications for Review filed January 6, 1986 by Channel 15/Omaha and Koplar Communications ARE GRANTED pursuant

to 47 C.F.R. § 1.115(g), to the extent that the decision of the Review Board, 102 FCC 2d 875, is modified herein, and ARE DENIED in all other respects.

43. IT IS FURTHER ORDERED That the Application for Review filed January 6, 1986 by Family Television IS DENIED pursuant to 47 C.F.R. § 1.115(g).

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] In addition, *Bay Television*'s requirement of daily physical presence ignores that other ways exist to monitor the performance of managers besides counting their hours each day.

[2] It was because the Antitrust Division of the Department of Justice faced this identical conceptual issue that it began using the HHI to discern market power in mergers. *Antitrust Division Merger Guidelines*, 47 Fed. Reg. 28,493 (1982). The Division believed that the likelihood of anticompetitive behavior as a result of a merger is a nonlinear function of the market shares of the two merging firms. So the Division decided that, rather than simply sum market shares of firms in an industry, it would first multiply each market share by 100, square that product, and then sum those squared products; then the resulting index would be evaluated on a scale of 0 to 10,000. *See* Baxter, *Responding to the Reaction: The Draftsman's View*, 71 Calif. L. Rev. 618, 625-28 (1983) (discussing Assistant Attorney General's drafting of Merger Guidelines). Thus, bigger market shares would be weighted more than linearly in the analysis. The higher the HHI, the greater the inferred likelihood that the merger would facilitate collusion, and thus be unlawful to consummate.

SEPARATE STATEMENT
OF
COMMISSIONER JAMES H. QUELLO

Re: Applications of Omaha TV 15, Inc., Channel 15/Omaha, Mid-America Broadcasting, Inc., Koplar Communications, Inc., and Family Television, Inc. (Omaha, Nebraska).

I concur with the majority's decision to grant the application of Mid-America Broadcasting, Inc. My preference would have been to uphold the conclusions reached by the Review Board. I am compelled to write separately because the Commission, reaching well beyond the facts before us, decided to use the case as a vehicle for making significant changes to the Commission's integration analysis.

Apart from any substantive concerns, fundamental changes in our integration policy should have been accomplished through a notice and comment proceeding. In fact, the courts have admonished the Commission for making changes to its comparative process without the benefit of public comment. Cf. *Citizens Communications Center v. FCC*, 447 F.2d 1201, 1204 n.5 (D.C. Cir. 1971).

The necessity for rational public comment is certainly evident from the majority's decision to embrace a mathematical formula to compute part-time integration. I understand the desire to develop a more precise comparative integration analysis. However, the precision created by the majority's decision is illusory at best.

The majority embrace a calculation modeled after the Herfindahl-Hirshman Index. The purported benefit of the HHI calculation is that by weighting certain factors it avoids the direct proportional approach to calculating part time integration criticized by the Review Board in *Van Buren Community Broadcasters, Inc.*, 87 F.C.C. 2d 1018, 1022 (Rev. Bd. 1981). However, this formula is designed to measure industrial concentration and the probability of coordinated monopolistic behavior. F. M. Sherer, *Industrial Market Structure and Economic Performance*, 58-59 (1980). There is no evidence that the assumptions underlying the HHI have any relevance to the Commission's integration policies. Thus, the Commission simply does not know whether the formula gives appropriate consideration to locally owned and operated facilities. Moreover, even if the calculations give proper weight to our integration concerns, how significant is a simple numerical advantage in this comparison? For example, if applicant A scores 4410 under this analysis and applicant B scores 4409, should the difference of one point be decisionally significant? If not, at what point does a simple numerical advantage become important? Such decisions are every bit as subjective as our current approach.

The problems inherent in the majority's approach should have been subject to the rigors of public comment. I do not object to revisions of our comparative process, the system is far from perfect. However, I would have preferred a more complete discussion of the issues before making such a radical change in policy.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

THE PUBLIC TELEPHONE COUNCIL

Petition for Declaratory Ruling
That Bell Operating Company Pay
Telephones are Customer Premises
Equipment for Regulatory Purposes

ORDER

Adopted: December 28, 1988; Released: January 19, 1989

By the Common Carrier Bureau:

1. Before the Bureau is a motion by the Public Telephone Council (PTC) filed on November 14, 1988 for leave to supplement it reply comments of October 11, 1988, together with the supplemental filing. A combined response was filed by Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company (Mountain) on November 23, 1988. For the reasons listed below the motion is granted.

2. On July 18, 1988 the Public Telephone Council filed a petition for declaratory ruling which seeks to exclude all Bell Operating Company pay telephones from the Customer Premises Equipment category under the Commission's policies. Public Notice of the petition was published by the Commission on August 9, 1988. Public Notice DA 88-1200. In accordance with 47 C.F.R. § 1.4, comments were due on September 9, 1988 and reply comments on September 26, 1988.[1] On November 14, 1988 PTC filed its motion for leave to submit a supplemental filing, together with the supplemental filing, and on November 23, 1988 Mountain filed a response to the PTC motion.

3. PTC seeks to inform the Commission of a recent judicial decision in *Modification of Final Judgment, (MFJ)*, in *United States v. AT & T*, 552 F. Supp. 131 (D.D.C. 1982), which it feels supports grant of its petition for declaratory ruling. PTC argues that the Court did not issue the decision until October 14, 1988, three days after the date upon which replies were due in the petition for declaratory ruling. PTC draws the Commission's attention to Section VII (D) of the opinion, pages 43-50, stating that "the Court authorized the premises owner to select the presubscribed interexchange carrier . . . for Bell Operating Company (BOC) public telephones on the owner's premises." PTC Supplemental filing at 1. PTC argues that this holding supports its view that the premises owner is a primary customer. *Id.* PTC claims that the Court's holding underscores its claim that there can be no meaningful distinction between the treatment of hotel room telephones and public telephones. Because the Commission regards hotel room telephones used for transient calling as Customer Premises Equipment (CPE), PTC argues that BOC public telephones must also be regulated as CPE. *Id.* at 2.

4. Mountain responds that the claim that the court's decision of October 14, 1988 imparts some validity to PTC's petition is erroneous. It argues that despite the court's decision the fact remains that the primary "user" of the BOC-provided payphone is the transient mobile public. Response to Motion at 2. Mountain further states that, should the Commission grant PTC's motion, it should permit other parties to respond to PTC's supplemental filing. Response to Motion at 3.

5. *Discussion.* Section 1.45(c) of the rules states that " . . . additional pleadings may be filed only if specifically requested or authorized by the Commission." 47 C.F.R. § 1.45(c). The petition of PTC has elicited 22 comments and 13 reply comments raising complex issues of law and fact. Several comments cited the then pending *MFJ* case, arguing its relevance to the PTC petition.[2] The court, however, did not issue its decision in the case until October 14, 1988, three days after the close of the reply comment period. While it is not Commission policy to accept pleadings beyond those authorized by the rules, in light of the repeated reference to the case by parties both supporting and opposing the petition, and the complexity of the issues involved, it is in the public interest to accept PTC's supplemental filing. In order to permit all parties to address the applicability of the court's decision, all parties are granted a period of fifteen days from the release date of this order in which to file a response to the supplemental filing.

6. *Order.* Therefore, IT IS ORDERED, pursuant to the authority delegated in 47 C.F.R. § 0.291, and 47 C.F.R. § 1.45(c), that PTC's motion for leave to submit supplemental filing is granted and its supplemental filing already tendered is accepted. ACCORDINGLY, responses to the supplemental filing of PTC are due within fifteen days of the release date of this order.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] On September 16, 1988 GTE Service Corporation and its affiliated domestic telephone operating companies filed a request for a one week extension of the reply period until September 30, 1988. By Order DA 88-1468, adopted September 20, 1988, released September 22, 1988, the Bureau extended the reply comment period for an additional two weeks, until October 11, 1988.

[2] *See, e.g.*, Opposition of Ameritech Operating Companies at 3, Reply Comment of the Florida Pay Telephone Association at 4, Opposition of Bell Atlantic at 2 and Comment of the Nynex Telephone Companies at 4, etc.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Ameritech Operating Companies
Tariff F.C.C. No. 2

Transmittal Nos. 221 and 242

Access Service Restructure

ORDER

Adopted: December 22, 1988; Released: January 4, 1989

By the Chief, Common Carrier Bureau:

1. By Transmittal No. 221, the Ameritech Operating Companies (AOCs) propose access charge revisions that would restructure their access services in two respects.[1] First, the existing mileage band structure for the local transport element of switched access would be replaced by a mileage sensitive structure composed of a per minute termination charge and a local transport facility charge, the latter assessed per access minute per mile. Second, the existing nonrecurring charge structure for both switched and special access services would be converted to a three-element structure: an administrative (records only) element, assessed per order; a design and central office connection element, assessed per circuit; and a customer connection charge element, assessed per termination. Nonrecurring elements of switched access circuits would be charged at the same rate in the five AOC areas, but could vary to reflect the use of line or trunk side connections.[2] Ameritech asserts that the revenue effects of increased nonrecurring charges are offset by decreases in usage-sensitive charges, so that the revision is neutral or desirable in its effect on most customers, and neutral with respect to overall revenues. Ameritech Description and Justification (D&J) at 1-2.

2. On October 5, petitions were filed by MCI Telecommunications Corporation (MCI), US Sprint Communications Company (Sprint) and jointly by the major television networks -- Capital Cities/ABC, Inc., CBS, Inc., and National Broadcasting Corporation (Networks). MCI also supplemented its petition with an informal analysis of deficiencies in the 1988 cost study used to develop task-specific time estimates for nonrecurring charges, which it submitted November 4, 1988.

3. As to the recasting of local transport, MCI contends that Ameritech has failed to explain the reasoning behind its division of local transport investment categories between the distance-sensitive and distance-insensitive rate elements it proposes. MCI Petition at 9-10. MCI further asserts that at least one assignment procedure clearly conflicts with the separations manual. *Id.* at 10-11. Regarding the restructured NRC elements, MCI observes that the Commission, in reviewing 1987 annual access filings, suspended proposed NRCs when the filing LEC failed to provide estimates of time and labor costs necessary to perform the specified functions. MCI also questions the reasonableness of various aspects of the AOC's task oriented costing (TOC) methodology used to estimate work time associated with each task. *Id.* at 5-6. Finally, MCI asserts several generic deficiencies in Ameritech's rate development. First, it states, Ameritech should not have relied on projections from the 1988 annual access tariff filing to develop the proposed charges. *Id.* at 6-7, and second, notwithstanding the short effective period for the rate changes propsed, Ameritech should have adjusted its baseline rates to reflect demand response.

4. Sprint assets that Ameritech has failed to explain the basis for its separation of local transport elements between the distance-insensitive termination charge and the distance-sensitive facility charge. Sprint Petition at 3-4. Sprint also contends the proposed three-element structure for nonrecurring charges is questionable because NRC costs estimated by the AOCs vary widely between line and trunk side connections, and across the five AOCs as well, while the same NRCs will be charged for Switched Access in the five states, differing only to the extent that the circuit involves a trunk or line side connection. As neither time estimates nor labor and overhead loading rates are provided, Sprint contends it is impossible to fully evaluate the reasonableness of the proposed rates. Sprint Petition at 6-8. Sprint also states the AOCs have not indicated the basis for their decision to calculate these charges on an individual case basis. Sprint Petition at 5 n.3.

5. The Networks state that television rate increases proposed by Ameritech for four of its five jurisdictions are based on unit investment data from Illinois, where proposed rate increases are already under investigation. Networks Petition at 2. Unit investment data provided from three jurisdictions, Illinois, Michigan, and Ohio, the Networks argue, vary so widely that none can be considered credible. *Id.* at 3, App. A. Moreover, the Networks argue, Ameritech does not develop monthly cost figures for Michigan and Ohio from those states' investment data, but instead substitutes costs from Illinois Bell studies. *Id.* The Networks aver that neither the shifting of costs from channel mileage to channel termination rate elements nor the use of fiber optic facilities warrant the differences identified by a comparison of these data. *Id.* at 4-5. In addition, the Networks assert that the inflated fully distributed cost closure factor applied by Illinois Bell compounds the supposedly exaggerated television service costs. Id. at 6-7. Finally, the Networks assert that the Illinois Bell data used in Transmittal No. 221 show an increase in overall claimed costs as well as a shift from the channel mileage rate element to the channel termination element.[3] *Id.* at 8-10.

6. As to MCI's contentions respecting separations treatment, Ameritech replies that investment can be distance sensitive even when the allocation method applied to underlying costs is not based on distance. Ameritech notes that directly assigned cable costs are determined by applying use percentages to a cable section's aggregate costs, which are inherently distance sensitive. Similarly, Ameritech states, equivalent pair miles in use are developed and adjusted by a cable fill factor to determine total investment. Ameritech Reply at 16-17. In contrast, Ameritech avers that COE Category 4.12 costs are developed from records that are not distance sensitive so these costs should not be considered distance sensitive even though allocated during rate development in the same manner as costs in C&WF Category 2. *Id.*

7. As to Sprint's assertions directed to the recasting of local transport, Ameritech replies that virtually all individual customers in Michigan and Wisconsin will experience a net reduction in current local transport usage charges, and the overall local transport usage charges applied to US Sprint in these states will also decrease. Ameritech Reply at 17-18 and Exhibits 4, 5.

8. Ameritech also replies that the disaggregated NRC structure will better align the recovery of nonrecurring costs with the way in which they are incurred. Ameritech Reply at 5. Ameritech asserts that contrary to Sprint's criticisms, its NRCs are substantially below cost, *Id.* at 5-6 and Exhibits 1, 2, and as to the application of new NRCs, that it is entitled to recover the administrative costs of such actions. *Id.* at 7. Respecting Sprint's assertions of inconsistent pricing between trunk and line side connections, and between the same rate elements for different operating companies, Ameritech observes that these variations reflect practices and costs that vary significantly between the individual operating companies. *Id.* at 7-8. With regard to the distinctive treatment accorded nonrecurring charges for large single orders, Ameritech states that it strikes a balance between the expense of special accounting needed to implement a track-and-bill arrangement, and recognizing customer requests that cost savings associated with larger orders be passed on. *Id.* at 8. Ameritech also contends that its D&J fully describes the TOC method used to develop the new NRC levels and rate structure, Id. at 9-10, but Ameritech supplements that showing in its reply. *Id.* at Appendices 1-4.

9. As to MCI's contentions of more generic deficiencies, Ameritech replies that the AOCs used demand quantities underlying the present rates to make the filing revenue neutral, and that, in any case, the use of revised demand figures would have minimal effect on the proposed rates. Ameritech Reply at 11-12, and Exhibit 3. As to MCI's assertion that demand response effects should have been recognized by the proposed rates, Ameritech avers that the limited duration of the proposed changes and their contribution to interexchange carriers' overall operating costs makes it unlikely that ICs would initiate pricing or network configuration changes on this basis that would significantly alter demand patterns. *Id.* at 13.

10. Ameritech replies to the argument that television service should be treated differently than other special access services by iterating the Network's benefit from shared facilities in the central office and outside plant. Ameritech Reply at 19-21. Ameritech also contends that while the Networks complain of disproportionate overhead cost burdens as compared to direct assignment of investment and expenses, the Common Carrier Bureau has previously rejected the sort of equipment-specific rates sought by the networks. Nor does it follow from the declining number of video circuits that no new facilities are required; Ameritech states that relocations of two major Chicago television studios are said to be in the planning stages and, if implemented, would utilize fiber optic rather than PSV facilities. *Id.* at 23.

11. Ameritech states with respect to cost studies of special access services that the only new video study conducted for the September 20, 1988, filing was performed by Illinois Bell, and this study projected costs lower than the 1986 study results of all AOCs. *Id.* at 25-26. Ameritech asserts the use of Illinois Bell costs from the more recent study would substantially decrease costs for the other AOCs. *Id.* Finally, Ameritech iterates that as the proposed rates will fall short of recovering all direct costs determined by the Illinois study, and would do so even if company specific annual charge factors were applied, there is no justification for undertaking the expense of company-specific video cost studies when Ameritech has no intent to establish rates set to recover the direct costs of video LDCs. *Id.* at 27.

12. The Common Carrier Bureau has reviewed Ameritech's Transmittal Nos. 221 and 242 and the petitioners' assertions. We conclude that Ameritech's proposal is neither so patently unlawful as to warrant rejection, nor that the contentions of petitioners warrant further investigation.

13. Accordingly, IT IS ORDERED that the petitions to reject or to suspend and investigate Ameritech Operating Companies Transmittal No. 221, as modified by Transmittal No. 242, filed by MCI Telecommunications Corporation, by US Sprint Communications Company, and jointly by Capital Cities/ABC, Inc., CBS, Inc., and National Broadcasting Corporation ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] The revisions are presently scheduled to become effective December 24, 1988.

[2] The AOCs also propose to calculate these charges on an individual case basis (ICB) when a single order entails more than 500 connections at the same location on the same date. In addition, Ameritech proposes rate structure refinements and contract discounts to its optional payment plan for Direct High Capacity DS1 service, and an expanded discount structure for local distribution channels (LDCs).

[3] The Channel Termination element has been restyled the Local Distribution Channel (LDC) by Ameritech; we use the older term for consistency with the Networks' usage and the earlier record.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 89-2

In the Matter of:

Amendment of Part 69 of the
Commission's Rules Relating to
the Common Line Pool Status of
Local Exchange Carriers Involved
in Mergers or Acquisitions

NOTICE OF PROPOSED RULE MAKING

Adopted: January 10, 1989; Released: January 17, 1989

By the Commission:

I. INTRODUCTION

1. On April 1, 1989, fundamental changes in the mandatory common line pooling arrangements that have governed the recovery of the non-traffic sensitive (NTS) costs of exchange carriers will be implemented pursuant to recommendations that were developed by the Federal/State Joint Board in CC Docket No. 80-286 (Joint Board) and subsequently adopted by this Commission.[1] These changes, which are described in more detail below, enable local exchange carriers (LECs) to leave the National Exchange Carrier Association (NECA) common line cost and revenue pool if they choose to do so, subject to certain conditions. That Joint Board recommended that we examine further the effect of mergers and acquisitions among LECs on the pooling status of surviving companies.[2] We accordingly initiate this Rule Making proceeding to consider what effect a LEC's involvement in a merger or acquisition should have on its participation in the complex revised pooling arrangements that will soon be implemented as part of the overall access charge plan.

II. BACKGROUND

2. On March 31, 1987, the Joint Board released a *Recommended Decision* in which it provided a study of the effects of the implementation of subscriber line charges (SLCs) and other recommendations it had prepared, and this Commission had adopted, relating to the recovery of NTS costs. The Joint Board *Recommended Decision* concluded that the record demonstrated that its earlier recommendations had advanced the four goals of the access charge proceeding by promoting economic efficiency, eliminating pricing discrimination, and deterring bypass, while preserving universal service. That *Recommended Decision* also developed and proposed recommendations for further action to advance these goals. This Commission adopted the Joint Board's conclusions and integrated recommendations in our *NTS Recovery Order*, with certain minor modifications in the proposed implementation schedule for SLC increases. [3]

3. Those recommendations included significant modifications in the existing common line tariff and pooling system.[4] Under the approach proposed by the Joint Board and adopted by this Commission, LECs would be permitted to withdraw from the NECA common line tariff and pool, and file carrier common line (CCL) tariffs based on their own costs, subject to certain conditions. These conditions include the "affiliate withdrawal requirement," which provides that carriers that choose to leave the pool and file their own common line tariffs remove all their study areas, and that departing holding companies remove all their affiliated companies.[5] Moreover, under the new rules, once a company (or group of affiliated companies) elects to leave the NECA common line pool and file its own common line tariff, it may not choose to participate in the NECA common line pool at a later date. Thus, this election opportunity is restricted by a "one-way" requirement.[6]

4. LECs leaving the pool will be obligated to make payments to the common line pool to keep the pooled CCL rates at the nationwide average level that would have resulted if all LECs had remained in the pool. The Joint Board concluded that this would enable large companies to establish more cost-based CCL rates without adversely affecting the rates charged by the smaller carriers that remain in the pool. Thus, LECs that withdraw from the NECA pool are required to contribute long-term support (LTS) to LECs that remain in the NECA pool, so as to enable pooling companies, which generally will be smaller, higher cost companies, to tariff a CCL charge equal to the charge that would have resulted if all LECs had remained in the pool.[7] In addition, four years of transitional support (TRS) payments will be provided to qualifying LECs that withdraw from the pool. In order to qualify for TRS, a LEC must be a net recipient from the pool in 1988 and must withdraw from the NECA tariff and pool in accordance with a schedule that provides the largest companies one opportunity and smaller companies two opportunities to leave the pool and qualify to receive TRS.[8] TRS would be paid by those non-pooling companies that were net contributors to the pool in 1988.

5. Although the parties who filed comments with the Joint Board did not directly address the issue of the common line pooling status of companies involved in a merger or acquisition, after the close of the comment period in that proceeding LEC industry representatives proposed a resolution of this issue in an *ex parte* presentation.[9] That proposal would have permitted a LEC that acquired another LEC with a pooling status different from its own to determine at its option whether the acquired LEC should retain its current pooling status or convert to the status of its new affiliate(s).[10] The draft proposal also contained language providing a process to challenge any election that would have a substantial impact on the long-term support obligations of carriers that had left the pool.[11] The industry representatives asserted that their proposal would maintain the marketability of small LECs in the new depooled environment.

6. The *Recommended Decision* observed that the record in that proceeding was not sufficiently detailed to permit the Joint Board to recommend adoption of the industry *ex parte* proposal, and noted that no parties had had an opportunity to comment on the plan. Thus, the Joint Board recommended that the proposal be examined and resolved in a separate Commission proceeding. Our *NTS Recovery Order* noted that we planned to consider what, if

any, adjustment should be made to the prescribed pooling arrangements to ensure that those arrangements do not inadvertently and unreasonably affect the marketability of small LECs.[12] We accordingly initiate this Rule Making proceeding to consider the issues regarding the pooling status of LECs that have been involved in a merger or acquisition.

III. DISCUSSION

A. General Considerations

7. The pooling modifications we have adopted are governed by rules that are not only complex, but closely interrelated. These pooling arrangements are also an integral part of our overall access charge system. Accordingly, we must be sensitive to the fact that whatever actions we take to address the seemingly narrow pooling issues raised by a LEC's involvement in a merger or acquisition could affect other aspects of our NTS recovery program. Thus, whatever rules we adopt in this Rule Making proceeding must serve the four fundamental goals of our access charge proceeding: promoting economic efficiency, eliminating pricing discrimination, deterring bypass, and preserving universal service.

8. Apart from these broad goals, we have identified several more specific considerations that we believe should be addressed in determining what pooling options should be made available to LECs involved in a merger or acquisition. First, whatever rules we develop relating to the pooling status of companies involved in such transactions should be as "neutral" as possible in terms of their effect on the underlying business decisions. Thus, the goal is to craft rules that will deter companies from structuring transactions in ways that are not based on sound business considerations, but are instead designed to circumvent or manipulate our pooling requirements. At the same time, we wish to ensure that our pooling rules do not adversely affect the marketability of small telephone companies and do not impede transactions that offer legitimate advantages to the companies and consumers involved. A structure that unnecessarily restricts the pooling flexibility of LECs in a merger or acquisition situation could deter business activity that would improve the efficiency of the affected LECs and benefit consumers.

9. Second, the approach adopted should not have the potential to cause material or unexpected changes in the complex pooling structure that has been developed. That structure should be protected against unacceptable disruptions in transitional or long-term support flows, or in the pool's common line revenue requirement. We seek to design rules that will not enable merger or acquisition activity to serve as a mechanism that LECs can use to shift their affiliates in or out of the pool in a way that would slowly erode the benefits that would otherwise flow from the pooling modifications. And third, LECs should not be accorded flexibility to an extent that would cause major problems for NECA in administering the common line pool and associated TRS and LTS arrangements, or for our review of the LECs' tariff filings. We invite comment on whether these concerns accurately describe the factors that should guide our decisions in this proceeding.

10. We further note that the current rules governing the revised pooling arrangements do not adequately address issues relating to the pooling status of LECs involved in a merger or acquisition, and will require some modification to accommodate these circumstances. For example, our affiliate withdrawal rule, which requires carriers that choose to leave the pool to remove all their study areas, and departing holding companies to remove all their affiliated companies at that time, would indicate that all companies involved in the transaction should acquire the same pooling status. On the other hand, the fact that our rules have a "one-way" restriction -- a company that has left the pool is not permitted to reenter the pool -- would indicate that a non-pooling LEC acquired by a pooling LEC would have to stay out of the pool, rather than take on the pooling status of its new affiliate(s). Moreover, while these rules suggest that when two companies with different pooling positions merge, the surviving entity should be outside the pool, there is no clear method for determining what the pooling status of the surviving entity should be, or what changes would be appropriate in the LTS and TRS obligations and/or benefits of the affected LECs.

B. The Industry Proposal

11. As discussed above, LEC industry representatives have advanced a proposal to address these issues.[13] In their *ex parte* presentations, these representatives expressed concern that, unless our rules are revised to provide for more pooling flexibility in the event of purchases, exchanges, or consolidations among LECs, our requirements would impede voluntary sales or exchanges that are desirable for sound business and customer service reasons. Those industry representatives proposed that, if a telephone company acquires property or is the survivor to a merger with a LEC having a common line pooling status different from its own, that company should have a new choice as to whether the acquired property would convert to the acquiring (or surviving) company's pooling status, or retain its pre-transaction status. These industry representatives further proposed that this approach should not be allowed to cause a substantial increase in the LTS obligations or in the CCL charges of LECs that have left the pool, and suggested that any challenge to a transaction based on the expected impact on access charges must be sufficiently timely so as not to delay the transaction.[14]

12. As the LEC representatives observed, the flexible approach they proposed would help maintain the marketability of small companies, and would protect subscribers in the transferred areas from pooling elections that are no longer appropriate under the new ownership. This proposal does, however, have several significant drawbacks. First, this approach could potentially have a substantial adverse impact on the revenue requirement of the common line pool, and thus on the LTS obligations of the non-pooling LECs. If, for example, a pooling company acquired one or more large non-pooling receiver companies (companies that had been net recipients in the common line pool prior to their departure), the acquiring company would be permitted to bring those receiver LECs back into the pool. This could greatly, and suddenly, increase the revenue requirement of the pool. Similarly, if a LEC in the pool decided to merge with a company or group of companies outside the pool, the transaction could be structured to have the surviving entity either inside or outside of the pool. This could potentially encourage a large, depooled receiver company that might want to return to the pool to seek out companies remaining in the pool as merger partners merely as a means of getting back in the pool. These scenarios could

result in a significant impact on the pool's revenue requirement, and indirectly on the support obligations of the non-pooling companies. The undesirable incentives that result from such an approach also raise certain questions.

13. The LEC Unity 1A representatives sought to address the concerns relating to the effects on the NECA pool by suggesting a procedure for challenging transactions that would have a substantial impact on the LTS obligations, and hence the CCL charges, of non-pooling LECs. However, the challenge procedure they proposed is vague and undefined, and could well lead to uncertainty and controversy in virtually every transaction that contemplates any change in pooling status. Moreover, this approach would put the burden on parties challenging the election to show that the election would have a significant impact on the CCL charges of non-pooling companies, whereas we tentatively conclude that the burden should properly be on companies involved in a merger or acquisition to show that any pooling changes that result would not adversely affect the overall pooling structure.

14. We are also concerned that the broad scope of flexibility in this proposal could cause administrative difficulties in the future and could result in a substantial number of holding companies having some of their affiliates in, and some out, of the NECA common line pool. Such an outcome could considerably complicate NECA's rate calculation and billing functions and our tariff review process. Adoption of the proposal could also require NECA to make an unreasonable number of adjustments to the LTS and TRS obligations and/or benefits of LECs involved in transactions with companies with a different pooling status.[15] Furthermore, this result could create undesirable incentives for LECs with companies in different pooling positions to allocate costs improperly among study areas according to whether the study areas are inside or outside of the pool.

15. For the reasons detailed above, we consider that the problems associated with the Unity 1A proposal outweigh its advantages. Accordingly, we tentatively conclude that this approach would not be the best solution to the issues addressed in this Notice. We describe below an approach that may achieve the goals we have identified above while avoiding many of the difficulties raised by the Unity 1A proposal.

16. We recognize that the issues raised in this Notice are unusually complex, not only because we are attempting to accommodate the large variety of potential business transactions, but also because any rules we adopt will affect many aspects of our somewhat complicated and interrelated pooling arrangements. We accordingly seek comment on both the broad principles and the specific mechanics of the approach we propose. In addition, we seek comment on alternative proposals that differ from the approach we discuss below that might also serve our goals.

C. Proposed Requirements That Would Apply To A LEC Involved In A Merger or Acquisition With A Company Having A Different Common Line Pooling Status

17. We note at the outset that the flexibility proposed in this Notice only addresses situations in which a pooling company acquires a non-pooling company or vice versa,[16] or two companies with different pooling positions merge. Thus, if a company remaining in the pool acquires or merges with another pooling company, or a non-pooling company with another non-pooling company, the acquired or merged entity would not have the option to change its pooling status except pursuant to our existing rules.[17] We recognize, however, that a transaction between two companies outside the pool could affect the LTS and/or TRS arrangements of the participating LECs, and we discuss this possibility below in the context of the broader discussion of the LTS and TRS ramifications of merger and acquisition activity.[18]

18. In a merger or acquisition transaction between two companies with different pooling situations, the participating companies theoretically could seek several different outcomes for the pooling status of the new company or companies. First, they could decide to have both newly-affiliated companies (or the surviving entity) outside the pool. Second, they could conclude that the best course would be for the company outside the pool to reenter the pool, which would require them to seek modification of our "one-way" restriction to accommodate the special circumstances of a merger or acquisition situation in some way. Or third, they could decide that it would be desirable to have the acquiring LEC and the acquired LEC retain their respective pre-transaction pooling positions for either a transition period or for a longer time, and could request this Commission to modify our affiliate withdrawal rule to permit such an option. We address each of these scenarios in turn.

1. All LECs Involved In The Transaction Desire To Leave The Pool.

19. Under our proposed approach, if the acquiring LEC (or the surviving entity in a merger context) determines that all of the newly affiliated companies should leave the common line pool it could do so. The only relevant constraint on this option would be that the effective date for any such change in common line pooling status must coincide with the effective date of the annual tariff filing following consummation of the relevant transaction.[19] We also propose to apply this same requirement to any of the authorized changes in pooling status associated with a merger or acquisition that are discussed in this Notice.

20. This situation -- two LECs involved in a merger or acquisition both desiring to leave the pool -- presents the least difficulties regarding the pooling status of the affected companies. A decision by both companies to leave is consistent with our existing requirements, including the affiliate withdrawal rule and the requirement that a company may not reenter the pool once it has left.[20] This situation does, however, have the potential to create complications concerning the LTS and TRS arrangements of the companies involved. Our rules provide that after the transition period LTS obligations will be allocated based upon the percentage of lines attributed to each non-pooling carrier.[21] We believe that these rules will accommodate mergers and acquisitions. However, one issue that arises if we permit companies to leave the pool during the transition period because they are acquired by or merge with a non-pooling company is what LTS or TRS arrangements would apply to the new entity or entities outside the pool.

21. Our rules currently provide that one of the conditions that a LEC must meet in order to be eligible to receive TRS (in which case it would not pay LTS during the transition period) is that it must announce its intention to leave the pool according to a two-step schedule which ends December 31, 1989.[22] If a company leaves the

pool after the specified dates so that it is no longer eligible for TRS, and that company is acquired by or merges with a LEC outside the pool that is already subject to certain LTS or TRS arrangements, a question arises as to whether such a company should become eligible to receive TRS, or whether (and under what circumstances) it should have to pay LTS.

22. We propose that the following rules should apply to the calculation of LTS and TRS payments when a non-pooling company (Company A) acquires or merges with a pooling company (Company B), and the surviving entity leaves the pool. The first scenario to consider is when the non-pooling Company A was obligated to pay both LTS and TRS (and was not receiving TRS) prior to the transaction. In this circumstance, we propose that the new entity (or affiliated entities) would likewise be obligated to pay LTS and TRS according to a formula that adds together the 1988 Base Years of the separate pre-transaction companies.[23]

23. The second scenario is when Company A had been receiving TRS based on Company A's 1988 Base Year (and had therefore not been required to pay LTS or TRS). In this case, we propose that TRS payments not be adjusted to reflect the effect of the merger or acquisition involving Company B. Thus, the new entity or affiliated entities would receive TRS based only on Company A's 1988 Base Year; 1988 data from Company B would not be included in the formula. Moreover, in this situation, if Company B had been a net recipient in the NECA pool at the time of its departure, we would not propose to require the surviving entity or entities to pay LTS or TRS during the transition period.[24] However, if Company B had been a net contributor to the pool, we propose to require the surviving entity or entities to pay LTS and TRS based on the 1988 Base Year of Company B during the transition period.[25] We propose this disparate treatment for companies leaving the pool pursuant to a merger or acquisition during the transition period because we consider that the LTS/TRS obligations for such companies could deter transactions that may be in the public interest. We seek comment on whether this approach best serves our goals, or whether we should always require such a company to pay TRS and LTS, even if it departs the pool in a merger or acquisition context.

24. In our view, this general approach for handling the LTS and TRS arrangements in this context comes close to maintaining the pre-transaction status quo, and appears to best serve the interests of administrative simplicity, minimizing the impact on the overall pool support structure, protecting the interests of small LECs, and equitable treatment for all concerned. We recognize, however, that there are many possible means of addressing the effects that mergers or acquisitions might have on existing LTS and TRS arrangements, and we seek comment on the details of the approach we suggest and on other proposals.

25. A related issue that is also not directly addressed in our present rules is the question of what LTS and TRS arrangements should apply when two companies outside the pool are involved in a merger or acquisition. For the reasons discussed above, we propose that, if the companies involved are all LTS and TRS contributors, their new LTS and TRS obligations should (effective on the date the annual access tariffs take effect) be calculated based on the combined 1988 Base Years of the companies. Similarly, if all the companies involved are TRS recipients, their new TRS benefits should be based on the combined 1988 Base Years of the companies. This approach would apply throughout the transition period; after that time the LTS obligation would be based on the combined access lines of the affiliated companies as is currently provided for in our rules. *See* 47 C.F.R. § 69.612. If, however, a company that is an LTS/TRS contributor acquires or merges with a TRS recipient LEC, we propose that, for the duration of the transition period, the new entity continue to contribute to the LTS and TRS funds according to the 1988 Base Year formula of the pre-transaction contributor LEC, and continue to receive TRS according to the 1988 Base Year formula of the pre-transaction recipient LEC. (Of course, an appropriate netting arrangement could be developed.) While we recognize that this could mean that a single company would be contributing to the LTS and TRS funds at the same time that it is receiving TRS, we believe that this result is justified because it would only be for a limited period, would appear to be easiest to administer, and would further our goal of neutrality with regard to the marketability of LECs. We invite comment on these proposals.

2. All LECs Involved In The Transaction Desire To Be In The Pool.

26. LECs with different pooling positions might also seek to have the LEC outside the pool reenter the pool, either through a merger with the LEC already in the pool or by being acquired as an affiliate of the pooling company. We recognize that allowing a company that has left the pool to reenter the pool at a later date is inconsistent with our "no pool reentry" principle. We consider, however, that it would be appropriate to apply a somewhat less restrictive rule in the circumstances of a merger or acquisition so that companies would not be deterred from negotiating an otherwise desirable business transaction simply because their different pooling positions might require them to utilize separate corporate structures or administrative procedures that they considered less efficient. Providing for limited additional flexibility in this context can help to avoid this problem by enabling the acquiring or surviving LEC(s) to consolidate its operations and to take advantage of the benefits of participation in the NECA common line pool and tariff if that is deemed best for the overall company and its customers. Furthermore, it would be easier for NECA to administer and for this Commission to review the tariff filings of the affected LECs if all their affiliates had the same pooling status.

27. We do, however, consider that certain safeguards must be applied when LECs seek to reenter the pool in a merger or acquisition context in order to protect against any major adverse impact to the pool, and indirectly to the LTS obligations of non-pooling LECs. We also wish to prevent LECs from structuring transactions in a particular manner for the primary purpose of circumventing our rules. The revenue requirement of the NECA common line pool could, for example, be severely and suddenly affected if a large receiver holding company outside the pool merged with a small LEC in the pool; such a transaction could well be crafted primarily for the purpose of getting the large non-pooling holding company back in the pool. In addition, if a large non-pooling contributor company should seek to reenter the pool through a merger or acquisition with a pooling LEC, it would be necessary to assess whether that change would cause a significant increase in the LTS and TRS obligations of the remaining non-pooling LECs.

28. In order to address these concerns, we propose that, if a non-pooling company wishes to reenter the pool because it is involved in a merger or acquisition with a LEC in the pool, it must seek and obtain a waiver from this Commission[26] before it would be allowed to reenter the pool.[27] To obtain such a waiver, LECs would have to demonstrate that the overall pooling structure would not be materially harmed. Specifically, the petitioning companies would have to show that the reentry of the non-pooling LEC(s) into the pool would not have a substantial adverse effect on the revenue requirement of the pool, and would also not significantly increase the LTS and/or TRS obligations of the remaining non-pooling LECs.[28] In evaluating such waiver requests, the Bureau would also take into account the comparative benefits that would flow to the public from consolidating the companies' operations within the NECA common line pool.[29]

29. We acknowledge that a waiver proceeding could itself inject an element of uncertainty into a proposed merger or acquisition, but we consider that this approach is necessary to protect the integrity of the overall pooling structure. Moreover, we are of the view that these types of waiver requests can be processed expeditiously if a decision to grant the waiver would not have a substantial impact on our pooling structure, and that a procedure can be developed that would safeguard confidential information relating to planned business transactions.[30] We generally seek comment on whether any special procedures might be appropriate for processing such waiver requests.

3. The LECs Involved In The Transaction Desire To Retain Their Respective Pre-transaction Pooling Positions.

30. Finally, a LEC acquiring another company with a different pooling status may desire to have each party to the transaction retain its pre-transaction pooling position for either a transition period or for an indefinite period of time. Although an acquisition context presents somewhat different issues than the initial decision to leave the pool, such an option would be inconsistent with the principles underlying our affiliate withdrawal rule, which we have concluded is essential to the success of our pooling modifications.[31]

31. We are concerned that whatever approach we adopt to address the pooling status of companies involved in mergers or acquisitions not be used as a vehicle for circumventing our affiliate withdrawal rule. Just as is the case with the initial pooling election, companies contemplating a merger or acquisition would have the incentive to structure transactions that would result in high-cost areas being in the pool, and low-cost areas out of the pool, if the rules we develop here permitted such manipulation. Over time, these types of transactions could undermine the benefits of the pooling modifications in the same manner as they could in the context of the initial decision to depool by enabling LECs to shift the majority of high-cost areas into the pool and low-cost areas out of the pool.

32. We are also concerned that an approach that affords companies an unlimited ability to leave acquired properties in a different pooling status from the acquiring LEC could create administrative difficulties for NECA insofar as it would have to undertake entirely separate CCL rate or support flow calculations for affiliates with different pooling positions. It could, moreover, cause additional problems for this Commission in reviewing tariffs or other data submissions for affiliated companies because the type of filing would differ from one affiliate to another depending on whether they are inside or outside of the pool.

33. We nevertheless consider that it would again be appropriate to provide for some flexibility in this respect to achieve sufficient neutrality regarding the marketability of telephone companies. A sudden change in the pooling status of a company (particularly one receiving substantial benefits from pool participation) could have an adverse effect on its marketability. We accordingly propose that, when LECs with different pooling positions are involved in an acquisition, those LECs should be permitted to retain their pre-transaction pooling positions for a three-year transition period following the consummation of the transaction. The affected LEC(s) would be required to change their pooling status so as to have all the affiliated companies leave the pool effective on the first annual tariff filing date that falls more than three full years after completion of the transaction.[32] Making this additional pooling option available to LECs should help ensure that our pooling rules do not interfere with acquisitions that would benefit the participating companies and the overall public interest.

34. An alternative approach would be to permit the acquired LEC to remain in the pool indefinitely if its costs are greater than a fixed percentage of the nationwide average. For example, if our rules were to provide that companies with costs over 150 percent of the nationwide average that are acquired by a non-pooling LEC could stay in the pool indefinitely (or until its costs drop below the specified level), the higher cost companies that would be in greatest need of the risk sharing and administrative savings offered by participation in the pool would be able to avail themselves of this protection. Moreover, this kind of limitation might reduce the number of companies that would be eligible to retain a pooling status different from their affiliates to a manageable figure that would not cause unreasonable administrative difficulties for NECA or for this Commission in preparing or reviewing the relevant tariff materials.

35. We believe that, if we adopt one of these two alternatives for affording LECs some limited flexibility to leave an acquired LEC in a different pooling position under specified conditions, this step would help to ensure that our rules do not adversely affect the marketability of LECs. Either of these approaches would protect against sudden disruptive changes in the complex pooling structure, and would also minimize manipulation of our pooling requirements that could, over the long term, cause fundamental shifts in the makeup of the pool that would threaten the benefits of the pooling modifications. Furthermore, these options would minimize the potential administrative difficulties that could occur if LECs were permitted unlimited flexibility to retain separate pooling positions for acquired companies.[33] We tentatively conclude that, of these two alternatives, the three-year "transition period" proposal described in paragraph 33 best serves these goals. However, we also invite comment on whether we should instead adopt the alternative described in paragraph 34, which would allow a pooling LEC to remain in the pool if its costs exceeded a specified percentage of the nationwide average.

36. In summary, we tentatively conclude that the overall approach described in the preceding paragraphs will further the goals and address the concerns at issue in this

proceeding. We believe that our proposals are responsive to the marketability concerns expressed by representatives of small telephone companies. Our approach would allow a LEC that acquires another LEC with a different pooling status to choose whether to leave the acquired property in the separate pooling status under certain circumstances, or to choose to consolidate its operations outside the pool. Moreover, our tentative plan provides a means for LECs out of the pool to seek approval to reenter the pool in a merger or acquisition situation, yet protects against any major adverse impact to the pool by ensuring that acquired or merged LECs can only reenter the pool if such LECs demonstrate that the overall pooling arrangement will not be materially harmed by their action. This proposal should also minimize the administrative burdens that NECA and this Commission would have to confront as the result of merger and acquisition activity among LECs after our pooling modifications become effective.

37. We seek comment on the principles we have identified as guiding our proposed approach, and on the extent to which our proposal serves those goals. In addition, we ask commenting parties to discuss logistical or administrative considerations involved in implementing our proposal, and to identify any practical implementation issues or other problems relating to the feasibility of the approach we propose. To the extent parties suggest alternatives to the approach described above, we ask that such a party describe the details of its proposal and explain how the proposal would differ from our proposed approach and how it furthers our goals.

38. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements that are applicable to the public, and will not increase or decrease burden hours on the public.

39. We certify that the requirements contained in the Regulatory Flexibility Act, 5 U.S.C. §§ 601-612, are not applicable to the rules that may result from this proceeding.[34]

IV. PROCEDURAL MATTERS

40. Pursuant to Sections 1, 4(i)-(j), and 403 of the Communications Act of 1934, as amended, and Section 553 of the Administrative Procedure Act, NOTICE IS HEREBY GIVEN of a proposal to amend Part 69 of this Commission's Rules.

41. All interested persons may file comments on the proposal discussed in this Notice no later than February 16, 1989, and reply comments may be filed not later than March 3, 1989. In accordance with the provisions of Section 1.419 of our rules, an original and five copies of all statements, briefs, comments, or reply comments shall be filed with the Secretary, Federal Communications Commission, 1919 M Street, Northwest, Washington, D.C. 20554. All such filings will be available for public inspection in the Dockets Reference Room at the Commission's Washington, D.C. offices.

42. For purposes of this non-restricted notice and comment Rule Making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period.[35] The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding.[36]

43. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2) if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present.[37] Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of same to the Commission's Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates.[38]

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] *See* MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, *Recommended Decision and Order*, 2 FCC Rcd 2324 (1987) (hereinafter *Recommended Decision*).

[2] *Recommended Decision* at n. 194.

[3] MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, *Report and Order*, 2 FCC Rcd 2953 (1987) (hereinafter *NTS Recovery Order*), *aff'd on reconsideration*, 3 FCC Rcd 4543 (1988) (hereinafter *NTS Recovery Reconsideration Order*), *petition for review pending, Public Service Commission of the District of Columbia v. FCC*, D.C. Cir. No. 88-1661 (Petition filed Sept 12, 1988).

[4] *Id.* at paras. 111-135.

[5] *See Recommended Decision* at para. 130. The Joint Board reasoned that to provide otherwise would likely cause LECs to remove only their low-cost study areas while leaving high-cost areas in the pool, and might establish improper incentives relating to the allocation of common costs between study areas in the pool and those that are withdrawn. It concluded that these results would diminish or even defeat the benefits to be gained from the pooling modifications. *See also NTS Recovery Reconsideration Order* at paras. 47-58.

[6] *See NTS Recovery Reconsideration Order* at n. 17.

[7] *See id.* at paras. 100 & 111.

[8] The rules implementing this recommendation provide that the larger (Level I) companies must have made an election by August 30, 1988, to leave the pool on April 1, 1989, in order to qualify to receive TRS, while smaller (Level II) companies can only qualify to receive TRS if they make their election to leave the pool by August 30, 1988, to leave the pool on April 1, 1989, or by December 31, 1989, to leave the pool on July 1, 1990. *See* 47 C.F.R. §§ 69.2(t)-(w), 69.3(e)(9) & 69.612(b) (1987); Access Tariff Filing Schedules, *Report and Order*, FCC 88-283 (released Sept. 14, 1988) (hereinafter *Access Tariff Scheduling Order*). Companies may leave the pool on an annual basis after these dates, but will be ineligible to receive TRS. *See* 47 C.F.R. § 69.612(b).

[9] *See Notice of Ex Parte Meeting* between federal Joint Board staff and Counsel to the National Rural Telephone Association and United States Telephone Association (USTA), MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, filed January 14, 1987 (hereinafter January 1987 *Ex Parte* Submission).

[10] Representatives of the USTA Unity 1A Coordinating Committee's Mergers and Acquisitions Subcommittee also discussed this proposal in an *ex parte* meeting with Commission staff on March 10, 1988. *See* Letter from M. Humphrey to Acting Secretary, FCC, dated March 10, 1988.

[11] *See infra* note 14.

[12] *See NTS Recovery Order* at para. 42.

[13] *See supra* notes 9 & 10.

[14] The draft amendment submitted by these LEC representatives on behalf of the LEC industry Unity 1A Mergers and Acquisitions Subcommittee provides as follows:

> Subsequent to the initial election for individual common line tariff filings, companies, that are survivors to a merger or that acquire properties, having a common line tariff status that is different than their own, shall on acquisition, either elect to retain the tariff status of the purchased property, or to convert it to the status of the purchasing entity. Note: It is not the intention of this provision that such an election shall have a substantial impact on the access charges that any carrier that does not participate in the Association tariff must recover in its common line tariff as its share of the long term support revenue requirement of the common line pool. Any challenge based on the expected impact on access charges must be sufficiently timely so as not to delay the transaction.

See January 1987 *Ex Parte* Submission at 2.

[15] *See supra* para 4.

[16] We propose to treat exchanges of LECs or study areas between separately-owned companies as if each of the participating companies had acquired the LEC or study area it received in the transaction. However, we request comments on whether such exchanges should be subject to any requirements that differ from the general approach we propose to apply to acquisitions described below.

[17] For example, our rules presently provide that LECs in the pool will have one opportunity each year to opt to leave the pool. *See* 47 C.F.R. § 69.3(e)(9) (1987). However, a company would not be eligible to receive TRS unless it left on certain dates as specified in our rules (*see supra* note 8), and a merger or acquisition would not create a new opportunity for a pooling company to leave the pool and be eligible to receive TRS.

[18] *See infra* para. 25.

[19] This timing requirement is designed to control the administrative problems involved in any change in pooling status, and is consistent with the requirements of the traffic-sensitive pool. It is also consistent with the existing rules for withdrawal from the common line pool, which afford carriers one opportunity each year after 1989 to leave the pool (although a company would of course not be eligible to receive TRS if it decided to leave after the specified August 30, 1988, and December 31, 1989, pool election dates for Level I and Level II companies, respectively).

[20] Under our present rules, if the pooling company that desires to leave the pool is an average schedule company, it would be no longer be considered an average schedule company once it leaves the common line pool. *See* 47 C.F.R. § 69.605(c)(2) (1987).

[21] Thus, if carrier A has 10 percent of the non-pooled access lines in a given year, it will bear 10 percent of the annual pool support obligations. *See* 47 C.F.R. § 69.612 (1987).

[22] *See supra* note 8. Non-pooling LECs receiving TRS do not incur LTS obligations until after the TRS transition period is concluded.

[23] We note that, under Section 69.612 of our rules, the formula for calculating LTS and TRS payment obligations differs depending on when a company leaves the pool. Thus, if a LEC elects to leave the pool on the election dates specified for its size category in our rules (*see supra* note 8), its LTS and TRS obligations (or TRS support as the case may be) are calculated based on the company's 1988 Base Year data throughout the transition period (the four-year period during which TRS is paid). By contrast, the LTS and TRS obligations of any company that opts to leave the pool after its specified Level I or Level II election dates are calculated based on the number of access lines of the company. This dual approach could obviously create substantial difficulties if a company decides to leave the pool during the transition period, but after the specified dates, to merge with a LEC that had already left the pool. We accordingly propose that any LTS and TRS obligations of companies that opt to leave the pool during the transition period, but after the appropriate Level I or Level II election dates because the companies are acquired by or merge with a non-pooling company (that had left by the prescribed election dates) should be calculated based on the combined 1988 Base Years of the LECs that make up the new entity (or affiliated entities) outside the pool. This approach should reduce the administrative problems that NECA and the affected companies would encounter if NECA and the LECs were required to calculate the LTS and TRS obligations of affiliated companies, or even of a single merged company, according to different formulas.

[24] If Company B left the pool on its own after the election dates set for Level I or II companies, it would normally be required to pay TRS and LTS. *See* 47 C.F.R. § 69.612(a)(1) (1987).

[25] If appropriate, a netting arrangement could be developed to offset the LTS obligation of (former) Company B with the TRS payments being received by (former) Company A.

[26] The Common Carrier Bureau would normally act in the first instance upon such waiver requests pursuant to delegated authority.

[27] Of course, if a LEC reenters the pool, any LTS obligations or TRS benefits it may have been subject to outside the pool will no longer apply as of the effective date of the pooling status

change. An issue may, however, arise regarding LTS or TRS arrangements if only part of a company outside the pool is acquired by or merged with a company in the pool. Under these circumstances, it may be appropriate to reduce the LTS and TRS obligations, or the TRS benefits as the case may be, of the portion of the non-pooling company left outside the pool. We seek comment on this suggestion.

[28] An overall increase in the LTS obligations of the remaining non-pooling LECs could be indirectly caused by an increase in the revenue requirement of the pool due to the reentry of a large receiver company into the pool, or could also possibly occur when a large contributor company reenters the pool, and the remaining non-pooling LECs must each pay a greater percentage of the total LTS and TRS obligations. If the waiver request involves the reentry of a TRS recipient into the pool, the fact that the remaining non-pooling contributor LECs would no longer be obliged to pay TRS to the reentering LEC for the duration of the transition period would obviously have to be considered in evaluating the overall impact.

[29] In the event the requested waiver is denied, the companies involved would have the option of structuring the transaction so that both companies leave the pool, or so that both companies remain in their respective pre-transaction pooling positions in accordance with the rules that apply to such situations as discussed in the next section (*see infra* paras. 33-35).

[30] We recognize, for example, that some proposed business transactions could be time-sensitive or could involve commercial information that the participants would not wish to have made publicly available, and we specifically seek comment on an effective mechanism for handling waiver requests that relate to such situations.

[31] As we recently reiterated in the *NTS Recovery Reconsideration Order*, the affiliate withdrawal requirement is important because, without this rule, the potential benefits of depooling could be significantly reduced or eliminated since a holding company would likely leave its high-cost companies or study areas in the pool, while withdrawing its lower cost companies or study areas. This result would likely bring only administrative changes to the current mandatory pooling structure because the LTS flows would approach existing pool flows, and companies would lose many of the advantages of the pooling modifications, such as the flexibility to charge CCL rates closer to costs outside the pool, and increased incentives to reduce costs and improve the efficiency of their operations. Moreover, we observed that a holding company that decides to leave the pool has several means available to it to protect its high-cost affiliates from suffering a severe adverse impact from a decision to leave the common line pool. *See NTS Recovery Reconsideration Order* at paras. 47-58.

[32] We view this option as a means of affording pooling companies with a transition period that will enable them to adjust more easily to the prospect of departing the pool in a merger or acquisition context. We do not consider that companies that take advantage of this option should be allowed at the end of the transition period to seek permission for their affiliates to reenter the pool pursuant to the waiver procedures described above. *See supra* paras. 28-29. We seek comment on this proposed approach.

[33] We note that, under any of the possible approaches described above that would permit acquired companies to retain separate pooling positions under certain circumstances, the LTS and TRS arrangements that applied to the non-pooling company before the transaction would continue to apply until the acquired entity leaves the pool to join its affiliates, at which time the LTS and TRS rules designed to address such departures would apply. *See supra* paras. 22-23.

[34] In accordance with the provisions of Section 605 of that Act, a copy of this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration at the time of publication of this *Notice of Proposed Rule Making* in the Federal Register. Because of the nature of local exchange and access services, we have concluded that small telephone companies are dominant in their field of operation and therefore are not small entities as defined by the Regulatory Flexibility Act. *See* MTS and WATS Market Structure, 93 FCC 2d 241, 338-89 (1983). Thus, we are not required by the terms of that Act to apply the formal procedures set forth herein. We are nevertheless committed to reducing the regulatory burdens on small telephone companies whenever possible consistent with our public interest responsibilities. Accordingly, we have chosen to utilize, on an informal basis, appropriate procedures to analyze the effect of proposed regulations on small telephone companies. As part of our analysis of the issues discussed in this Notice, we will consider the impact on small telephone companies, *i.e.*, those serving 50,000 or fewer access lines. Our proposed changes would not have an adverse effect on those companies and should benefit such carriers through increased flexibility in common line pooling arrangements in the context of merger and acquisition activity.

[35] *See generally* 47 C.F.R. § 1.1206(a) (1987).

[36] *See* 47 C.F.R. §§ 1.1202(f) & 1.1203.

[37] *See* 47 C.F.R. § 1.1202(b).

[38] *See* 47 C.F.R. § 1.1206.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: January 13, 1989

PROCEDURES FOR FILING ERRATA TO SUPPORT INFORMATION FOR ANNUAL 1989 ACCESS TARIFFS

In an Order, *Commission Requirements for Cost Support Material To Be Filed with 1989 Annual Access Tariffs*, DA 88-1554, released Oct. 3, 1988, (*1989 TRP Order*), the Common Carrier Bureau addressed procedures for the filing of errata by local exchange carriers (LECs) to correct inaccurate cost support data accompanying the 1989 annual access tariff filings made on December 30, 1988. The Bureau noted that the filing of flawed supporting information and the subsequent submission of errata seriously detracted from the ability of the Commission and interested parties to evaluate the reasonableness of proposed rates within the notice period. The Order therefore adopted procedures, similar to those employed in the review of past access tariff filings, to address this problem, including the requirement that carriers request special permission to submit corrected data while maintaining the scheduled effective date of the annual filing.

Any erratum relating to the 1989 annual access tariff filing should be filed under an application for special permission requesting that the December 30, 1988 transmittal take effect on the originally scheduled effective date of April 1, 1989. This includes errata filed to correct errors or otherwise revise tariff support material. We emphasize that carriers filing annual access tariffs are under a legal obligation to correct any erroneous data discovered in the Tariff Review Plan (TRP) or other cost support material in a timely fashion. Carriers should also recognize that any delay in correcting erroneous data increases the possibility that their filing will be treated as a new transmittal with an effective date later than April 1.

Both the staff's preliminary review of the December 30, 1988, filing and information submitted by American Telephone and Telegraph Company (AT&T) have identified a number of apparent errors and omissions in the LECs' cost support information. *See* Letter from R.H. Castellano, Division Manager, Federal Regulation, AT&T to Chief, Tariff Division, Common Carrier Bureau, FCC, dated Jan. 9, 1989. Obviously, carriers are required to correct in a timely fashion any errors that they discover. More important, however, carriers that have omitted required data entirely have failed to comply with Commission and Bureau Orders. Any carrier that has omitted data in its annual filing is directed to include these data in a filing made pursuant to the instructions contained in this Public Notice. Failure to provide all required supporting data in conformance with the terms of this Public Notice would cast serious doubt on the reasonableness of proposed rates. Carriers are not required, however, to submit data to populate data cells in Charts COS-6, COS-7, and COS-8 to the extent that these cells are associated with cells marked N/A in Chart COS-1.

The following guidelines detail the procedures that carriers should follow when submitting errata.

TYPES OF ERRATA REQUIRING SPECIAL PERMISSION

Carriers must seek special permission to correct all clerical, transcription, substantive, minor, or other errors. This requirement is essential to the Commission's review of the annual access tariffs since even a minor error may impede the Commission's performance of its duties under Section 201, Section 202, and other provisions of the Communications Act. It is also important that corrections be placed in the public record so that interested members of the public will have an opportunity to review, analyze, and comment on the revised data. We will not attempt to delineate classes of errata in advance, but we anticipate that special permission will, as in the past, be granted routinely for minor corrections that are filed promptly and represent good faith efforts to correct inadvertent errors.

PART 69 CONFORMANCE ORDER

Carriers are reminded that their erratum filings must comply with the requirements of the Commission's Order of December 12, 1988, in CC Docket No. 87-113, *Amendment of Part 69 of the Commission's Rules and Regulations, Access Charges, To Conform It with Part 36, Jurisdictional Separations Procedures*, FCC 88-400, released Dec. 12, 1988 (*Part 69 Conformance Order*). *See also* Public Notice, Local Exchange Carriers Directed To Comply with Part 69 Conformance Order and Reconsideration Order in Their Annual 1989 Access Tariff Filings, DA 88-1996, released Dec. 23, 1988. Erratum filings made pursuant to the *Part 69 Conformance Order* shall be made on January 31, 1989.

CC DOCKET 88-1, PHASE II

By an Order released January 6, 1989, the Common Carrier Bureau granted certain carriers an extension of time to calculate and develop refund plans and 1989 revenue requirement adjustments as required by the Commission in its investigation of the LECs' 1988 access tariffs. *Annual 1988 Access Tariff Filings*, CC Docket No. 88-1, Phase II, DA 88-9, released Jan. 6, 1989 (*January 6 Order*). Carriers are reminded that, pursuant to the *January 6 Order*, carriers choosing to revise their 1989 revenue requirements or to propose a refund plan to reflect disallowances made in that investigation must request special permission to do so as part of their general erratum application for special permission filed in accordance with this Public Notice. This special permission request must be filed on January 31, 1989.

FORM OF FILING

The application for special permission to make an erratum filing should be accompanied by either the corrected pages, properly numbered and clearly labeled to indicate the date of the re-submission and the location in the filing, or by a replacement filing including both uncor-

rected and corrected pages. If special permission is granted, the Commission will issue a special permission number for the erratum filing and a letter granting the request will be prepared and sent to the carrier.

If the corrections include changes to information on computer disks, then replacement disks should be submitted with the erratum filing, labeled to show clearly the date of the re-submission and other identifying information. Both filings for special permission and subsequent erratum submissions should be filed in the same manner as the corresponding material in the December 30, 1988, filing. The application for special permission should state that it concerns a proposed amendment to the carrier's annual access filing, identifying the transmittal number and other pertinent information.

If the application for special permission is granted, and the revisions do not affect rates, the carrier should file an amended transmittal using the transmittal number of the December 30, 1988, filing. If revisions include any change in a rate, a new transmittal number should be assigned and used. If the application for special permission is denied, a new transmittal number should be used and the material should be filed as required in the *TRP Order*.

FILING DATES

Carriers are directed to file applications for special permission to file errata correcting errors and omissions in their annual access tariffs and support materials as these errors and omissions are discovered. However, in order to make this process more manageable, we require that applications for special permission to file errata be filed only on Monday, January 23, 1989, and Tuesday, January 31, 1989. This schedule should allow interested parties a reasonable opportunity to track these filings. We emphasize that Tuesday, January 31, 1989, is the cutoff date for filing applications for special permission to make erratum filings. After this date, carriers must make a substantial showing of good cause in order for a filing even to be considered. The date on which erratum filings shall be made will be specified in the letters granting the carriers' special permission requests.

Although carriers remain obligated to correct filed data when they identify errors, they should not expect that special permission will be granted with respect to filings at a later date absent a substantial showing of good cause. Distribution of copies of applications for special permission should be made in the same manner as the December 30, 1988, filing. Carriers are reminded to serve copies on the Commission's commercial copier, International Transcription Service.

PETITIONS AND COMMENTS

Interested parties may file any comments with respect to erratum filings not later than Thursday, February 9, 1989. We do not anticipate permitting an opportunity for further comment after this date. For further information, contact Judy Nitsche at 632-5550, Daniel Grosh at 632-6387, or Mark Uretsky at 632-6312.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-614

In the Matter of:

Amendment of Section 73.202(b)
Table of FM Allotments,
FM Broadcast Stations.
(Terrell, Texas, and
Daingerfield, Texas)

MEMORANDUM OPINION AND ORDER

Adopted: December 5, 1988; Released: January 24, 1989

By the Chief, Policy and Rules Division:

1. Before the Commission is a Petition For Reconsideration filed by Metro Broadcasters, Inc. (Metro), licensee of Station KTLR(FM), Channel 296A, Terrell, Texas, of the Commission's action returning Metro's Petition For Rule Making and for Order To Show Cause (Petition).

2. In its Petition, Metro proposed the substitution of Channel 295C1 for Channel 295A at Terrell and requested issuance of an order to show cause why its license should not be modified to specify operations on Channel 295C1. Metro stated, however, that because the proposed upgrade at Terrell is mutually exclusive with Channel 295A at Daingerfield, Texas,[1] the substitution of Channel 295C1 at Terrell could be accomplished only if Channel 235C2 is substituted for Channel 295A at Daingerfield. Metro indicated in an engineering statement it submitted in support of its Petition that there is only one site from which a station operating on Channel 235C2 at Daingerfield can comply with all applicable minimum distance spacing requirements and also provide the community of Daingerfield with city-grade coverage in compliance with the requirements of Section 73.315 of the Commission's Rules.[2] It noted in that statement that that site is located 33.0 kilometers north of Daingerfield.

3. The Bureau returned Metro's Petition, because the proposed substitution at Daingerfield would not comply with the Commisssion's Rules. Assuming operation at Daingerfield of a Class C2 facility at a maximum power of 50 kw and a maximum antenna height of 150 meters HAAT, a city-grade signal would extend only 32.6 kilometers. Because Metro's proposed restricted site is located 33 kilometers from Daingerfield, it did not appear possible for Metro to provide city-grade coverage to Daingerfield in compliance with the requirements of Section 73.315. [3]

4. In its Petition For Reconsideration, filed December 17, 1987, Metro requests, with respect to the proposed Daingerfield upgrade, a waiver of Section 73.315 of the Rules. First, it asserts that the 0.4 kilometer difference between the predicted 32.6-kilometer distance at which a Class C2 Daingerfield station would provide city grade coverage and the 33.0-kilometer distance from its restricted site to Daingerfield is *de minimis*. Metro further submits that if Channel 295A at Daingerfield is upgraded, the signal of the upgraded Channel will serve a much larger area and population. In its waiver request, Metro also states that it intends to submit an engineering study as a supplement to its Petition For Reconsideration. The request, however, does not provide any information about the contents of the supplement. No supplement to the Petition For Reconsideration has been received.

5. Metro's Petition will be denied. Generally, the Commission's consideration of requests for waiver of the city grade coverage requirement of Section 73.315 is limited to the application context. *See Greenwood, Seneca, Aiken and Clemson, South Carolina*, 3 FCC Rcd 4108 (1988). Moreover, Metro has not met its burden for justifying a waiver. Its unsupplemented Petition for Reconsideration does not provide a basis for consideration of a waiver.

6. Accordingly, the Petition For Reconsideration filed by Metro Broadcasters, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Bradley P. Holmes, Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Daingerfield, Texas was one of 689 communities to which the Commission assigned new FM channels in 1985. *See* the *First Report and Order* in MM Docket 84-231, 50 Fed. Reg. 3514 (January 25, 1985).

[2] The coordinates of the site specified by Metro for operation at Daingerfield on Channel 235C2 are 33-19-35 and 94-44-10.

[3] In the letter returning the Petition, the Bureau also informed Metro that the site of Metro's proposed upgrade to Channel 235C2 at Terrell was short-spaced to an upgrade proposal in Arlington, Texas, to a proposed allotment in McKinney, Texas, to a vacant assignment in Granbury, Texas, and to an application for the Granbury assignment which had been dismissed but for which an Application for Review was pending. The letter did not state that these short-spacings constituted a second reason for the return of the Petition in addition to Metro's Section 315 violation noted *supra*. In its Petition For Reconsideration, Metro treated the Bureau's short-spacing findings as though they were a basis for the return of the Petition and accordingly opposed each such finding. Since Metro's inability to comply with Section 73.315 provided the sole basis for the return of Metro's Petition, we need not address Metro's oppositions to the Bureau's short-spacing determinations.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-612

In the Matter of

Amendment of Section 73.202(b),	RM-6485
Table of Allotments,	
FM Broadcast Stations.	
(Three Oaks, Michigan)	

NOTICE OF PROPOSED RULE MAKING

Adopted: November 28, 1988; Released: January 24, 1989

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule making filed by John Keeley (petitioner), requesting the allotment of FM Channel 248A to Three Oaks, Michigan, as that community's first FM broadcast service. Petitioner furnished information in support of the proposal and stated his intention to file an application for Channel 248A at Three Oaks.

2. We believe petitioner's proposal warrants consideration. Channel 248A can be allotted to Three Oaks, Michigan, in compliance with the minimum distance separation requirements of the Commission's Rules provided there is a site restriction 3.6 kilometers (2.2 miles) west of the community.[1] The site restriction will prevent a conflict with Station WZOW, Channel 249A, Goshen, Indiana. Since the allotment of Channel 248A to Three Oaks is within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government is required.

3. In view of the fact that the proposed allotment could provide a first FM broadcast service to Three Oaks, Michigan, the Commission believes it is appropriate to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Three Oaks, Michigan	---	248A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 17, 1989**, and reply comments on or before **April 3, 1989**, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John T. Scott, III
Crowell & Moring
1001 Pennsylvania Avenue N.W.
Washington, D.C. 20004-2505
(Counsel to the petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will

be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for Channel 248A at Three Oaks are 41-48-00 and 86-39-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-606

In the Matter of

Amendment of Section 73.202(b), RM-6434
Table of Allotments,
FM Broadcast Stations.
(Eureka, California)

NOTICE OF PROPOSED RULE MAKING

Adopted: November 28, 1988; Released: January 24, 1989

By the Deputy Chief, Policy and Rules Division:

1. Eureka Christian Broadcasting, Inc. (petitioner), permittee of Station KECU(FM), Channel 288A, Eureka, California, has filed a petition for rule making seeking the substitution of Channel 288C1 for Channel 288A and modification of its permit to specify operation on the higher-powered channel.

2. We believe that this proposal is in the public interest, since it could provide an additional expanded coverage FM service to Eureka. A staff engineering analysis has verified that Channel 288C1 can be substituted for Channel 288A at the petitioner's specified site,[1] in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules.

3. Although petitioner requested the issuance of an *Order to Show Cause* in connection with its modification request, such action is not required. Rather, in accordance with established Commission policy, we shall propose to modify the Class A permit of Station KECU(FM), as requested by petitioner, in the event Channel 288C1 is substituted for Channel 288A at Eureka, California. Moreover, pursuant to the authority contained in Section 1.420(g) of the Commission's Rules, we will not accept other expressions of interest in the use of Channel 288C1 at Eureka.

4. Accordingly, in order to provide Eureka with an additional expanded coverage FM service, we seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Eureka, California	222C, 242C, 268C ,288A	222C, 242C, 268C,288C1

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **March 17, 1989,** and reply comments on or before **April 3, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

James J. Popham, Esq.
Walker, Bordelon, Hemlin,
Theriot and Hardy
701 South Peters Street
New Orleans, LA 70130

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND

the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Reference coordinates at the petitioner's specified site for Channel 288C1 are 40-43-36 and 123-58-18.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-605

In the Matter of

Amendment of Section 73.202(b), RM-6392
Table of Allotments,
FM Broadcast Stations.
(Brush, Colorado)

NOTICE OF PROPOSED RULE MAKING

Adopted: November 29, 1988; Released: January 24, 1989

By the Deputy Chief, Policy and Rules Division:

1. Randall S. Jacobson, Receiver (petitioner), licensee of Station KKDD(FM),[1] Channel 296A, Brush, Colorado, has filed a petition for rule making seeking the substitution of Channel 296C1 for Channel 296A and modification of its license to specify operation on the higher-powered channel.

2. We believe that this proposal is in the public interest, since it could provide a first expanded coverage FM service to Brush. A staff engineering analysis has verified that Channel 296C1 can be substituted for Channel 296A at the petitioner's existing site,[2] in conformity with the minimum distance separation requirements of the Commission's Rules.

3. We propose to substitute Channel 296C1 for Channel 296A at Brush, Colorado. As requested, we also propose to modify the Class A license of Station KKDD(FM) to specify operation on Channel 296C1. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we will not accept other expressions of interest in the use of Channel 296C1 at Brush.

4. Accordingly, in order to provide Brush with its first expanded coverage FM service, we seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Brush, Colorado	296A	296C1

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **March 17, 1989,** and reply comments on or before **April 3, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows:

KKGZ/KKDD Radio Stations
P.O. Box 707
Brush, CO 80723
Attn: Randall S. Jacobson, Receiver

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It

should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] An application for the involuntary assignment of license of Station KKDD(FM) from G-Z Broadcasting, Inc. to Randall S. Jacobson (BALH-880223EB) was granted March 3, 1988.

[2] Reference coordinates at the present site of Station KKDD(FM) are 40-15-39 and 103-38-15.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-386

In the Matter of

Amendment of Section 73.202(b), RM-6413
Table of Allotments,
FM Broadcast Stations.
(Orlando, Florida)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 20, 1988; Released: January 24, 1989

By the Deputy Chief, Policy and Rules Division:

1. At the request of Radio Orlando (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 53 FR 30854, published August 16, 1988, proposing the substitution of Channel 255C2 for Channel 255A at Orlando, Florida, and the modification of its construction permit for Station WURG to specify operation on the higher powered channel.[1] Petitioner filed comments reaffirming its intention to apply for Channel 255C2, if allotted. No other comments were received.

2. We believe the public interest would be served by substituting Channel 255C2 for Channel 255A at Orlando, Florida, since it could enable Station WURG to expand its coverage area. Channel 255C2 can be allotted to Orlando in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.7 kilometers (2.9 miles) west to avoid a short-spacing to Station WKGR, Channel 254C, Fort Pierce, Florida.[2] As proposed, we shall also modify petitioner's construction permit to specify operation on Channel 255C2.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 10, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Orlando, Florida	222C, 243C, 255C2, 262C, 286C

4. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the permit of Radio Orlando for Station WURG, Orlando, Florida, IS MODIFIED to specify operation on Channel 255C2, in lieu of Channel 255A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Radio Orlando is the successor-in-interest to Urban Broadcasting Corporation which originally sought the channel.

[2] The coordinates for this allotment are North Latitude 28-33-00 and West Longitude 81-25-30.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-264

In the Matter of

Amendment of Section 73.202(b),	RM-5729
Table of Allotments,	RM-6097
FM Broadcast Stations.	
(Live Oak and St. Augustine, Florida)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 13, 1988; Released: January 24, 1989

By the Deputy Chief, Policy and Rules Division:

1. At the request of WNER Radio, Inc. (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 2 FCC Rcd 4326 (1987), proposing the substitution of Channel 251C for Channel 251C1 at Live Oak, Florida, and the modification of its license for Station WQHL(FM) to specify operation on the higher powered channel.[2] Petitioner, Bohanan Associated Broadcasters, Inc. (Bohanan) and Shull Broadcasting Co., Inc. (Shull) filed comments. Shull also filed a counterproposal requesting the substitution of Channel 250C2 for Channel 249A at St. Augustine, Florida, and the modification of its license for Station WUVU(FM) to specify operation on the higher powered channel. [3] Petitioner filed reply comments. Shull filed comments in response to petitioner's reply comments.[4]

2. Shull, licensee of Station WUVU, Channel 249A, St. Augustine, Florida, counterproposes the substitution of Channel 250C2 for its Class A facility, and the modification of its license accordingly. It states that the substitution of channels, assuming maximum Class C2 facilities, would provide new service to an area of 4,599 square kilometers with a total of 675,407 persons. It contrasts this to the figures provided by petitioner which state that the upgrade of Station WQHL at Live Oak would result in a gain of 9,627 square kilometers but only 101,651 persons. Based on the comparison of population gain, Shull submits that its proposal would clealy better serve the public interest. In addition, it states that Station WQHL was already provided with an opportunity to upgrade to Class C but instead voluntarily accepted its present Class C1 facilities. However, it believes that both requests can be accommodated if Channel 251C at Live Oak were site restricted to an area approximately 47 kilometers west of petitioner's proposed site, thus allowing Station WUVU to relocate its transmitter north of St. Augustine. Shull contends that these site restrictions would enable Station WQHL's 1 mV/m service contour to encompass 382,641 persons in lieu of the 175,260 envisioned by petitioner, and allow Station WUVU to increase its service area to encompass 713,704 persons from it present 38,297 persons. Finally, it notes that the Live Oak site restriction would also create a larger transmitter site area for Station WZKS at Jesup, Georgia, which seeks to upgrade from a Class A to Class C1 facility.

3. Bohanan, licensee of Station WZKS(FM), Jesup, Georgia, supports the Shull counterproposal to the extent that it would impose a 47 kilometer west site restriction on Channel 251C at Live Oak. Alternatively, it requests that Station WQHL be site restricted no farther northeast than the coordinates which petitioner specified in its petition for rule making. At the time Bohanan filed its comments it had before the Commission a request to substitute Channel 252C1 for Channel 252A at Jesup and the modification of its license accordingly. It states that the imposition of a site restriction on the Live Oak allotment would allow Station WZKS(FM) a reasonable land area in which to relocate its transmitter.[5]

4. Petitioner states that Live Oak presently receives local service from only one FM and one AM station, that being co-owned Stations WQHL and WNER(AM), while St. Augustine receives local service from two FM and two AM stations, including Shull's co-owned Stations WUVU and WFOY(AM). It argues that its proposal should be preferred under the allotment criteria set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). It submits that a grant of its request would enable Station WQHL to provide service to 2100 square kilometers of white area and 787 square kilometers of gray area while Shull's proposal for St. Augustine will provide no such first or second aural service.[6] Petitioner also disputes Shull's contention that there is some indication that there is no substantial public interest to be served by the proposed Live Oak upgrade since petitioner "apparently [earlier] assessed that a Class C facility in Live Oak was not desirable." Petitioner states that Station WQHL was initially granted as a Class C station with 50 kW power in 1972. Its current facilities of 50 kW effective radiated power (ERP) at 112 meters height above average terrain (HAAT) were reconstructed in 1984 after a tornado destroyed a portion of the tower it shared with co-owned Station WNER-AM. In preparing to rebuild its antenna, petitioner states that it discovered that the antenna reference coordinates on file with the Commission were incorrect and that using correct coordinates would only permit the use of Class C1 facilities at their present site. Therefore, it opted to build a Class C1 facility at its present site rather than continue to operate under special temporary authority at reduced power and height for the extended period of time it would take to locate and obtain approval to operate from a new site which would permit Class C facilities. Petitioner goes on to state that had it not been for the tornado and subsequent discovery of the error in the coordinates for Station WQHL's transmitter site, it would have sought the upgrade much earlier.

5. Petitioner also opposes the allotment of 251C with a 47 kilometer west site restriction. It agrees that compliance with the site restriction could permit continued coverage to all of Live Oak, even though it believes that its choice of transmitter site would be severely restricted. However, according to petitioner, the adoption of Shull's counterproposal would eliminate the present service provided by Station WQHL to underserved listeners in the three counties east of the community who now depend on its programming, while merely providing an additional service from WQHL to the already well-served areas adjacent to Tallahassee. Petitioner states that the latest Arbitron survey showed Station WQHL to be the number

one ranked station in the three counties east of Live Oak. Further, petitioner states that it receives 35-40% of its advertising revenue from that area. It does not dispute the total population gain figures which Shull attributes to an upgraded Station WUVU. However, it states that virtually all of the newly served population resides in the area south of Jacksonville, Florida, which it claims is already well served. Therefore, petitioner submits that the only benefit accruing from the imposition of a 47 kilometer site restriction on Channel 251C at Live Oak would be to further Shull's private interest. In comparing the two proposals, petitioner states that Shull provides no first or second fulltime aural service from either its present or proposed facility. In contrast, it states that Station WQHL provides first and second aural service to a substantial area which would be increased by the allotment of Channel 251C. Using the methodology for computing gain area as set forth in *Greenup, Kentucky*, 2 FCC Rcd 4319 (1987), petitioner provides the following chart:

	First Service	Second Service	Total	Gain	Percent
WUVU LICENSED FACILITIES					
Area (Sq. km.)	0	0	0	--	--
Population	0	0	0	--	--
WQHL LICENSED FACILITIES					
Area (Sq. km.)	2,725	1,313	4,038	--	--
Population	21,332	7,297	28,629	--	--
SHULL COUNTERPROPOSAL FOR WUVU					
Area (sq. km.)	0	0	0	0	0.00%
Population	0	0	0	0	0.00%
WQHL PROPOSAL					
Area (sq. km.)	4,134	3,170	7,304	3,266	80.00%
Population	23,637	19,726	43,363	14,734	61.75%
SHULL COUNTERPROPOSAL FOR WQHL					
Area (sq. km)	3,109	2,561	5,670	1,632	40.41%
Population	22,423	17,979	40,402	11,773	41.22%

6. Petitioner also notes that Ronald Seggi (Seggi) has requested the allotment of Channel 251A to Flagler Beach, Florida (RM-5937). According to petitioner, this request, which is mutually exclusive with the allotment of Channel 250C2 at St. Augustine, would be favored over the upgrade since it represents a first local service. While it has been informally advised that Seggi has requested dismissal of its proposal, it argues that administrative efficiency would "appear to dictate" that the Commission issue a Further Notice seeking expressions of interest in use of a Flagler Beach allotment.[7] Finally, petitioner states that Bohanan's Jesup, Georgia, upgrade is not mutually exclusive with its proposal at Live Oak, pointing out that Bohanan's own study indicates that the requested upgrade at Live Oak would provide ample useable area for Station WZKS(FM) at Jesup.

7. In response, Shull states that the first and second fulltime service figures presented by petitioner are not persuasive. It points out that the figures are based on minimum Class C facilities of 100 kW and 300 meters which are virtually identical to that which can be obtained if Station WQHL increases its operation to the maximum Class C1 facilities of 100 kW and 299 meters. Shull argues that petitioner's decision to voluntary downgrade Station WQHL to a Class C1 in 1984 and its present proposal reflecting minimum Class C facilities suggest that it has no intention of ever constructing the full facilities possible with a Class C allotment. Therefore, it argues that the protection of Station WQHL as a full Class C, but employing only minimum Class C facilities, would provide the station with more protection than necessary while also preventing other area stations, including Station WUVU at St. Augustine, from improving their service.

DISCUSSION

8. Based on the record before us, we believe the public interest would be served by substituting Channel 250C2 for Channel 249A at St. Augustine and denying the substitution of Channel 251C for Channel 251C1 at Live Oak. In *Revision of FM Assignment Policies and Procedures, supra*, the Commission set forth the following priorities:

(1) First fulltime aural service;

(2) Second fulltime aural service;

(3) First local service;

(4) Other public interest matters.

[Co-equal weight given to priorities (2) and (3)]

Petitioner contends that it will provide a first and second fulltime service to 14,734 persons within a 7,304 square kilometer area. However, it appears that this figure is based on the actual facilities currently being used by Station WQHL (58 kW at 112 meters). When correctly computed, using maximum facilities for all classes of stations except Class C, where minimum facilities are assumed, we find that the allotment of Channel 251C to Live Oak would not provide any significant second aural service and a first aural service only to the very small community of Keatons Beach, Florida (U.S. Census population of 60 persons), a figure we consider *de minimus*. Therefore, our decision must rest on the fourth category, other public interest matters. In determining which of the two proposals would better serve the public interest, we have evaluated the area and population which would gain service from a grant of the respective proposals. Our study uses the methodology set forth in *Greenup, Kentucky, supra*, which assumes maximum facilities for Class A through C1 stations and minimum facilities for Class C stations. The result of our study is as follows:

Station WQHL, Live Oak

County	% Covered by Class C1	% Covered by Class C	% Increase for County	Total Pop. of County	Gain in Pop. Served
Brooks, GA	10%	60%	50%	15,255	7,628
Lowndes, GA[8]	70%	90%	20%	30,376	6,075
Lanier, GA	10%	30%	20%	5,654	1,131
Clinch, GA	50%	40%	-10%	6,660	- 666
Total for Georgia Counties:			**14,168**		
Jefferson, FL	0%	30%	30%	10,703	3,211
Madison, FL	90%	100%	10%	14,894	1,489
Taylor, FL	60%	95%	35%	16,532	5,786
Dixie, FL	30%	30%	0%	7,751	--
Gilchrist, FL	70%	40%	-30%	5,767	-1,730
Alachua, FL[9]	10%	0%	-10%	69,977	-6,998
Union, FL	80%	20%	-60%	10,166	-6,100
Baker, FL	70%	10%	-60%	15,289	-9,173
Total for Florida Counties:			**-13,515**		
Total Gain in Population Served:			**653**		

Station WUVU, St. Augustine

St. Johns, FL	60%	100%	40%	51,303	20,521
Flagler, FL	0%	25%	25%	10,913	2,728
Putnam, FL	0%	30%	30%	50,549	15,165
Clay, FL	0%	60%	60%	67,052	40,231
Duval, FL[10]	0%	50%	50%	30,083	15,042
Jacksonville, FL (City)	0%	90%	90%	540,920	486,828
Total Gain in Population Served:			**580,515**		

Thus, as can be seen from the above figures, the allotment of Channel 250C2 to St. Augustine will provide a new service to far more people, even if we were to exclude the population residing within Jacksonville, than would the allotment of Channel 251C to Live Oak. Further, we note that petitioner has made no commitment to seek more than minimum Class C facilities which are very nearly the same facilities which can be used if it were to upgrade to maximum Class C1. Therefore, we believe that the allotment of Channel 250C2 to St. Augustine should be preferred. We recognize that Channel 251C can be allotted to Live Oak with a 47 kilometer west site restriction. However, petitioner has stated that it would not accept such a site restriction.

9. Channel 250C2 can be allotted to St. Augustine in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.7 kilometers (7.9 miles) north to avoid a short-spacing to the proposed substitution of Channel 250C for Channel 250C1 at Clearwater, Florida, for Station WKRL-FM and the construction permit of Station WSCF, Channel 251C2 at Titusville, Florida.[11]

10. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 10, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
St. Augustine, Florida	250C2, 288A

11. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Shull Broadcasting Co., Inc. for Station WUVU, St. Augustine, Florida, IS MODIFIED to specify operation on Channel 250C2, in lieu of Channel 249A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The community of St. Augustine has been added to the caption.

[2] By letter of September 28, 1988, Day Communications, Inc. states it is now the licensee of Station WQHL and expresses its continuing interest in the modification of the station from Channel 251C1 to Channel 251C. *See* BALH-880523GK, granted July 27, 1988.

[3] Public Notice of the counterproposal was given on October 2, 1987, Report No. 1683.

[4] Shull requests acceptance of its additional comments. It recognizes that the Commission's rules do not contemplate the filing of pleadings beyond the comment and reply comment cycle. However, it argues that petitioner's response to the counterproposal presented, for the first time, technical information concerning the white and gray area service that petitioner earlier claimed would occur as a result of the upgrading of Station WQHL at Live Oak. Petitioner filed a Motion to Strike Shull's further comments. It contends that there was no need to present detailed information concerning white and gray area service prior to the filing of Shull's counterproposal. However, since the data was prepared in accordance with the Commission's required methodology, petitioner argues that Shull need not

have awaited the presentation of the information but could have undertaken its own study. We agree that Shull could have obtained the white and gray area coverage information prior to its submission by the petitioner. However, we believe that the public interest would be served by accepting Shull's additional comments since it provides us with a more complete record.

[5] The license of Station WZKS-FM was modified to specify operation on Channel 252C1 by *Report and Order*, MM Docket 87-607, 3 FCC Rcd 5547 (1988).

[6] For purposes of FM allotments, white area is an area which receives no fulltime aural service and gray area is one which receives only one fulltime aural service.

[7] Seggi's Flagler Beach proposal was dismissed at his request by letter dated December 10, 1987. Without such an expression of interest, the Commission will not propose the allotment of an FM channel.

[8] The figures for Lowndes County (population 67,972) do not include Valdosta (population 37,596) since the community is already within the existing Class C1 service contour.

[9] In Alachua County (population 151,348), the city of Gainesville (population 81,371) is not covered within the existing Class C1 service contour nor could it be covered even if Station WQHL were to operate with maximum Class C facilities.

[10] Because of its population density, we have dealt with the city of Jacksonville (population 540,920) separately.

[11] The coordinates for this allotment are North Latitude 30-00-00 and West Longitude 81-21-35.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-554

In the Matter of

Local Exchange Carrier
Access Tariff Rate Levels

ORDER TO SHOW CAUSE

Adopted: December 1, 1988; Released: December 2, 1988

By the Deputy Chief, Common Carrier Bureau:

I. BACKGROUND

1. By its final Order in CC Docket No. 88-326, the Commission moved the effective date of the annual 1989 access tariff filings from January 1 to April 1, 1989. *See* Access Tariff Filing Schedules, CC Docket No. 88-326, FCC 88-283, released Sept. 14, 1988 (*Tariff Filing Deferral Order*). That decision extended the effective period for current local exchange carrier (LEC) access rates. The present rates were in almost all cases filed to be effective from January 1 through December 31, 1988, based upon projections of cost and demand for that period. Adjustments to those rates as a result of the tariff review process were also based upon the assumption that the rates would remain in effect only during calendar year 1988.

2. The Notice of Proposed Rule Making in Docket 88-326 recognized that the delay in the annual filing period could result in rates which were unjust and unreasonable and proposed to instruct the Common Carrier Bureau "to make any interim adjustments to the carriers' rates should carriers fail to initiate such adjustments themselves." Access Tariff Filing Schedules, CC Docket No. 88-326, 3 FCC Rcd 4810, 4814 n. 7 (1988). The Commission adopted this proposal and "direct[ed] the Common Carrier Bureau to make any necessary adjustments should carriers fail to initiate such adjustments themselves." *Tariff Filing Deferral Order* at 2.

II. DISCUSSION

3. To date, only a few local exchange carriers have filed access rate reductions to retarget their rates at the authorized rate of return of 12.0 percent.[1] Our review of the LECs' actual reported earnings for the first six months of 1988, the most recent relevant data, strongly indicates, however, that many of the LECs are earning above this level, and in many cases substantially above. These earnings are listed in Appendix A. While it is possible in some cases that these initial earnings will not prove to be representative of the likely level of earnings in the first quarter of 1989, the period affected by the deferral of the annual filings, these actual earnings provide very strong evidence that the access rates of these LECs are or will be unreasonably high, in violation of the Communications Act, the requirement that access rates be targetted to earn no more than the authorized rate of return, the Commission's rate of return prescription, and the *Tariff Filing Deferral Order*.

4. Because there is no indication that many of the LECs with apparently excessive rates intend to correct them as the Commission contemplated in delaying the access filing dates, we are requiring some LECs to file appropriate rate reductions. In Appendix B, we identify each holding company with overall, interstate, combined switched traffic sensitive and special access returns that exceeded 12.25 percent in the first six months of 1988.[2] Each of these LECs is directed to file reductions retargetting these rates at the authorized rate of return of 12.0 percent to be effective no later than January 1, 1989, or to show cause why they should not be required to do so.[3]

5. It is obviously essential that we establish an expedited hearing cycle which at the same time allows the LECs a fair opportunity to address the relatively narrow issue of whether their present rates are or are not likely to exceed the maximum allowable rate of return during the first quarter of 1989. Accordingly, we direct each LEC listed in Appendix B to file, no later than December 12, 1988, an Answer showing cause why the Bureau should not prescribe reasonable rates, or a tariff transmittal proposing rate reductions that retarget its rates to 12.0 percent. Any such transmittal shall be filed to be effective no later than January 1, 1989. In prescribing rate reductions, the Bureau will of course direct that rates be reduced to a reasonable level as supported by the record.

6. In order to expedite rate reductions to reduce overall earnings to a reasonable level, we will not initiate an investigation of revised tariffs that achieve that result without a precise retargetting of each element.

III. PROCEDURAL MATTERS

A. *Filing Schedules*

7. Each of the holding companies and carriers listed in Appendix B as having excessive earnings is designated as a party. Each such party that does not elect to file a new tariff transmittal shall file an Answer. If the carrier states that it will file reductions to retarget its rates to 12.0 percent, it shall explain and justify its calculation of the appropriate reductions in the support material accompanying its transmittal. If the carrier elects to show cause why it should not be required to file such reductions, in whole or in part, it shall include in its Answer the information specified below and and any other information, necessary to specifically and completely respond to the allegations and matters contained in this Order to Show Cause. This Answer shall be filed no later than December 12, 1988. Oppositions to these Answers and petitions concerning the transmittals may be filed no later than December 19, 1988. The Answers and transmittals should be addressed in a single pleading. No further pleadings are contemplated.

B. *Issues Under Investigation and Relevant Information*

8. This proceeding is limited to the issues of whether and to what extent the current interstate access rates are or will be unreasonable during the first quarter of 1989 and, to the extent this is the case, whether the Common Carrier Bureau should prescribe reasonable rates. The

specific inquiry adopted to address these issues is whether the financial results reported by the carriers for the first half of 1988 in FCC Form 492 are representative of the results reasonably to be expected at current rate levels in the first quarter of 1989. In order to address these questions, each carrier seeking to show cause why its rates should not be reduced is directed to identify affirmatively all factors expected either to increase or reduce earnings from the average quarterly figures for revenues, expenses, etc., reported in Form 492. Each carrier shall separately identify and quantify such projected effects as: 1) demand and rate changes; 2) changes in separations factors; 3) other rule changes; 4) any depreciation rate changes; and 5) all other changes. It shall also state its projected, resulting Form 492 results for the first quarter of 1989. All assumptions on which these results are based shall also be stated, including projected changes in demand and costs.

C. *Ex Parte Requirements*

9. For purposes of this non-restricted notice and comment investigation, the parties are advised that *ex parte* presentations are permitted except during the "Sunshine Agenda" period. *See generally* Section 1.120(a) of the Commission's Rules. The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has abeen placed on the Sunshine Agenda and terminates when the Commission (1) releases a final Order; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. *See* Section 1.202(f) of the Commission's Ruloes. During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or Commission staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. *See* Section 1.1203 of the Commission's Rules.

10. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding; or (2) if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. *See* Section 1.1202(b) of the Commission's Rules. Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of the presentation to the Commission's Acting Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written submissions must provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments and must state on its fact that the Secretary has been served with a copy and must also state by docket number the proceeding to which it relates. *See* Section 1.1206 of the Commission's Rules.

D. *Filing Requirements*

11. An original and seven copies of all pleadings shall be filed with the Secretary of the Commission. In addition, one copy shall be delivered to the Commission's commercial copying firm, International Transcription Services, Inc., (ITS), Room 246, 1919 M Street, N.W., Washington D.C. 20554. Members of the general public who wish to express their views in an informal manner regarding the issues in this investigation may do so by submitting one copy of their comments to the Secretary of the Commission, 1919 M. Street N.W., Washington, D.C. 20554. Such comments should specify the docket number of this proceeding.

12. All relevant and timely Answers and Oppositions will be considered by the Bureau.

E. *Paperwork Reduction Act*

13. The investigation established in this Order has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection, or recordkeeping, labeling, disclosure, or record retention requirements as comntemplated under the statute.

IV. ORDERING CLAUSE

14. Accordingly, IT IS ORDERED, pursuant to Sections 205(a), 4(i), 213, 218, and 220 of the Communications Act, 47 U.S.C. §§ 205(a), 4(i), 213, 218, 220, and 1.701 of the Commission's Rules, 47 C.F.R. § 1.701, that the holding companies and carriers listed in Appendix B of this Order who do not elect to file revised tariffs to avoid overearnings are directed to SHOW CAUSE cause why they should not be required to reduce the Special Access and Switched Traffic Sensitive rates in their interstate access tariffs in accordance with the requirements of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Carl D. Lawson
Deputy Chief, Common Carrier Bureau

Appendix B

	TS		Switched Special Access	
	Local Switching	Info.	Local Transport	
United Tel.	15.69%	64.55%	13.67%	11.40%
Bell Atlantic	15.56%	81.99%	16.19%	11.13%
Contel	11.79%	43.49%	19.64%	11.69%
Rochester	13.92%	-357.14%	9.54%	16.14%
SW Bell	13.24%	282.87%	10.72%	14.68%
Lincoln Tel.	16.72%	ERR	11.56%	6.20%
NYNEX	15.20%	138.07%	9.99%	12.97%
TUECA	13.30%		9.32%	14.38%
Ill. Consol.	3.18%	-1200.00%	22.68%	5.33%
Borbeuse	55.17%		ERR	83.33%
Chillicothe Tel.	10.98%		294.59%	56.20%
Leaf River Tel.	16.81%		118.18%	
Kerman Tel.	22.38%		34.78%	63.16%
Fidelity Tel.	19.23%		21.92%	36.36%
Citizens Tel.	15.16%		23.36%	175.76%
Midland Tel.	20.00%		18.92%	66.67%
El Paso Tel.	17.89%		10.53%	36.36%
Inland Tel.	16.84%		16.44%	50.00%
Lakeside Tel.	18.18		20.00%	0.00%
Walnut Hill Tel.	17.61%	15.84%	13.06%	41.74%
East Ascension Tel.	20.02%		25.79%	0.00%
Plains Coop. Tel.	13.40%		4.40%	53.33%
Union Tel.	14.06%		14.47%	17.54%
Lajicarita Coop.Tel.	12.50%		19.05%	

Cincinnati Bell, Pacific Telesis, and Bell South are excluded from this list, because while each reported rates of return above the maximum allowable rate of return, each has already filed access rate reductions.

FOOTNOTES

[1] Nevada Bell, Transmittal No. 69; Pacific Bell, Transmittal No. 1371; Cincinnati Bell, Transmittal No. 509; Contel (California), Transmittal No. 87; Centel (Virginia), Transmittal No. 92; GTE (Northwest), Transmittal No. 398; and Bell South, Transmittal No. 171.

[2] *See* Section 65.700 of the Commission's Rules, 47 C.F.R. § 65.700.

[3] Retargetted rates for the Local Switching element should reflect expected changes in the COE Category 3 separations factor for 1989.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 87-113

In the Matter of

Amendment of Part 69 of the
Commission's Rules and
Regulations, Access Charges, To
Conform It With Part 36,
Jurisdictional Separations Procedures

ORDER ON RECONSIDERATION

Adopted: December 9, 1988; Released: December 12, 1988

By the Commission:

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Appendix A: Rule Amendments to Part 69 of this Commission's Rules

I. INTRODUCTION AND SUMMARY

1. Several parties[2] have filed petitions seeking reconsideration or clarification of the revisions to Part 69 of our rules recently adopted by this Commission. [3] In the *Report and Order*, we revised Part 69 of our rules to conform it to the recently revised Uniform System of Accounts (USOA) and Separations Manual. In this Order, we generally affirm our decision regarding the new allocation procedures under Part 69. To the limited extent indicated below, however, we grant the petitions for reconsideration and clarification. In this Order, we: (1) revise our prescribed phase-out schedule for the discounted Local Switching 1 rate element; (2) decline to revise the new allocation procedures for the General Support Facilities; (3) decline to revise the new allocation procedures for the computer expenses related to Billing and Collection; (4) revise the allocation procedures for Category 4.23 Central Office Equipment (COE), All Other Interexchange Circuit Equipment; (5) decline to adopt alternative proposals for the allocation of COE direct expenses; (6) decline to exclude equal access investment from the allocation of Other Investment; (7) revise the allocation procedures for Accounts 2002 and 2003; (8) generally decline to include Accounts 2004 and 2005 in the definition of Net Investment; (9) decline to adopt an alternative proposal for the allocation of gross receipts taxes; and (10) deny petitions seeking biennial access tariff filings.

II. BACKGROUND OF PROCEEDING

2. On May 1, 1987, we released a Notice of Proposed Rule Making (*Notice*) [4] to amend Part 69 of our rules to (1) conform the Access Charge Rules to the newly revised Part 36 Separations Manual,[5] (2) conform the Part 69

rules to the newly revised Part 32 USOA,[6] and (3) make certain other changes to facilitate the annual access tariff filings. The system of access charges codified in Part 69 is a final step in a multi-step process required to calculate the revenue requirements and rates for the various interstate access elements. The process begins when the carriers record their expenses and cost of investment in the accounts prescribed by the USOA. The carriers' next step is to segregate the costs associated with their regulated services from those associated with their nonregulated services in accordance with Part 64 of our Rules. Next, the carriers assign their regulated costs to the state or interstate jurisdiction pursuant to the Separations Manual. Finally, the carriers apportion their regulated interstate costs into interexchange costs and access costs and then apportion the latter among the access elements. The usual rate base and rate of return methodology is used to compute revenue requirements and access charges for each of these access elements.[7]

3. Because the Access Charge Rules are applied at the end of this rate determination process, they are written to accommodate the regulated accounts defined by the USOA and the categories prescribed by the Separations Manual. Therefore, our recent comprehensive revisions of both the USOA and the Separations Manual, which became effective January 1, 1988, necessitated a corresponding revision of the Access Charge Rules. Accordingly, we proposed amendments to the Access Charge Rules that would conform those rules to the new accounting and separations rules and would make necessary changes of a minor nature to enhance our ability to review annual access filings.

4. Based on the comments and data received in response to our *Notice*, we issued the *Report and Order*, adopting new access charge apportionment procedures. These new procedures incorporated our proposals to conform the Access Charge Rules to the new accounting and separations rules, to consolidate the Line Termination, Local Switching, and Intercept elements into a single element called Switching and to eliminate the distinction between the Local Switching 1 and Local Switching 2 subelements. We also adopted new procedures that limited the annual access filings to rate level changes. We modified our original proposal to reflect the revised separations procedures for marketing expenses,[8] to clarify generally the originally proposed apportionment procedures and to correct minor errors and omissions.

III. ISSUES AND DISCUSSION

A. Local Switching Rate Subelements

1. Background

5. Under the former Part 69 rules, carriers were required to apportion costs between three end office elements: Line Termination, Local Switching, and Intercept. In addition, Local Switching was divided into two subelements: Local Switching 1 (LS1) and Local Switching 2 (LS2).[9] The former Line Termination and Local Switching elements reflected the classification of the former Part 67 Category 6 COE, Local Dial Switching Equipment, into nontraffic sensitive (NTS) and traffic sensitive (TS) portions for jurisdictional separations purposes. The differences in the former LS1 and LS2 subelements of the Local Switching element reflected the Toll Weighting Factors (TWFs) that were applied to toll minutes for the purpose of allocating the TS portion of the former Category 6 COE. Under the new Separations Manual, we reclassified local dial equipment as Category 3 COE, Local Switching Equipment, and eliminated both the NTS/TS distinction and TWFs. We also found that given the advent of digital switching equipment, the maintenance of the NTS/TS distinction was no longer justified.[10]

6. Accordingly, in the *Notice*, we proposed to combine Line Termination, LS1, and LS2 into a single element that we proposed to assess on the basis of unweighted access minutes. We stated that this proposal would result in a modest increase in the Cost of Feature Groups A and B connections, but should not have a substantial impact on interexchange carriers (ICs) in view of the substantial progress in the implementation of equal access.[11] We also proposed to eliminate the Intercept element and to include those costs in the new Switching element.

7. The *Report and Order* adopted new rules to consolidate the former end office elements and to establish a transition to eliminate the rate differential between the LS1 and LS2 subelements. We found that retention of the LS1/LS2 differential in its former form would not be possible without changing the Part 36 separations rules.[12] We stated, however, that we could compute a discount for the new combined end office element that approximates the end result produced by the former combination of end office access elements and the consolidation of the Local Switching Subelements. We computed a series of declining discounts that parallel the transition formula for the new separations allocations factor for Category 3 COE. Our computations indicated that discounts of 22 percent in 1988, 17 percent in 1989, 12 percent in 1990, 7 percent in 1991, 2 percent in 1992, and 0 percent thereafter would accomplish that result.[13] We computed these discounts by: (1) adjusting the existing 35 percent rate differential between LS1 and LS2 to account for the fact that the switching costs associated with the old switching element represent only a portion of the total costs assigned to the new consolidated local switching element; and (2) applying to this adjusted differential the transitional formulas that are used for COE separations, *i.e.*, 90 percent in 1988, 70 percent in 1989, 50 percent in 1990, 30 percent in 1991, and 10 percent in 1992.[14] We developed a schedule to eliminate the rate differential between the LS1 and LS2 subelement over a five year period beginning in 1988 because the considerations that led us to adopt the recommendation of the Docket 80-286 Joint Board to phase-in the new Category 3 COE separations factor were sufficiently analogous to warrant the adoption of a five-year phase-in of the elimination of the LS1/LS2 differential.[15] We noted that the cost causational factors underlying the separations TWFs and the LS1/LS2 differential have not yet become totally obsolete. We also noted that a flash-cut approach could produce rate shock for both ratepayers and for ICs that compete with AT&T.

2. Positions of Parties

8. Several parties ask us to revise the phase-out schedule for the LS1/LS2 price differential.[16] These petitioners contend that the phase-out schedule will initially have the effect of increasing the LS1 discount rate rather than decreasing it. The petitioners also contend that such an increase will create perverse incentives for the ICs to continue to use Feature Group A and B services even

after conversion to equal access services and could result in a revenue shortfall for the NECA traffic-sensitive pool members.

9. AT&T contends that we erred in calculating the phase-out procedures and argues that the discount for the consolidated end office elements that is equivalent to the former 35 percent LS1 discount is actually 18.9 percent.[17] AT&T maintains that the discount factor for 1988, representing a 10 percent reduction in the LS1 discount, should be 17 percent, rather than 22 percent as established by this Commission. AT&T concludes that the current phase-out schedule will actually increase the LS1 discount by 30 percent in 1988 rather than decrease it by 10 percent as AT&T claims we intended. Moreover, AT&T argues that because the effect of the inflated Feature Groups A and B discount is to increase Feature Groups C and D rates and reduce the total demand minutes used in setting the Local Switching rates, those rates filed by the LECs are higher than the rates would have been had the discount been set at the proper level.

10. Pacific argues that we miscalculated the phase-out discount because we failed to recognize that, since the end office elements are consolidated, the effective discount for 1987 is 20 percent rather than 35 percent.[18] Thus, Pacific concludes, under the current phase-out schedule, the LS1 discount will actually increase in 1988. Pacific also disagrees with our decision not to combine the Directory Assistance surcharge access element with the Line Termination, Local Switching, and Intercept elements in the new Switching element.[19]

11. NECA proposes to discount the Local Switching element by 12.4 percent in 1987, 11.2 percent in 1988, 8.7 percent in 1989, 6.2 percent in 1990, 3.7 percent in 1991, 1.2 percent in 1992 and 0 percent in 1993.[20] NECA calculates that, when applied to the consolidated end office elements, the current 35 percent discount actually equals a 12.4 percent discount. Thus, NECA argues, the application of our prescribed 22 percent differential will result in an increase in the current LS1 discount. NECA also asserts that the 12.4 percent discount will not be reached until the third year under the current phase-out schedule. NECA maintains that as end offices are converted to equal access, the demand for the discounted LS1 service will increase, which will be exacerbated by the incentive provided by the current phase-out schedule for ICs to order Feature Groups A and B services in converted offices. NECA contends that, unless it has offsetting increases in its LS2 switching charge, these greater LS1 discounts will result in a revenue shortfall for the NECA traffic sensitive pool.

12. USTA and GTOC support NECA's proposal and recommend that we amend our phase-out schedule "for the LS1 discount. USTA recommends that the discount be phased-out by applying percentages that correspond to the phase-out schedule for the Category 3 COE allocation factor. GTOC proposes a similar phase-out schedule. USTA and GTOC each asserts that its proposal demonstrates the most appropriate methodology for the phase-out of the LS1/LS2 price differential.[21]

13. Bell Atlantic contends that the 22 percent discount level is higher than the 19.8 percent discount level it now offers users of Feature Groups A and B services in its region and suggests that the discount level be set instead at 17.8 percent.[22] Bell Atlantic also requests that we reconsider our decision to prescribe a local switching rate differential for the termination of Feature Group B service which Bell Atlantic maintains is identical to the termination service under Feature Group D.[23] US Sprint, MCI, and ALC oppose Bell Atlantic's request to eliminate the LS1/LS2 differential for terminating service. Those carriers contend that Bell Atlantic's arguments have already been presented to and considered by this Commission and that Bell Atlantic presents no reason to consider the issue again.[24] MCI also opposes Bell Atlantic's arguments regarding Feature Group B terminating service.[25]

14. MCI, US Sprint, and ALC object to any deviation from the adopted phase-out schedule for the LS1 discount. MCI and US Sprint contend that AT&T's reliance on the 1987 switched access charges based on the former separations rules instead of the revised separations rules results in an understated LS1 differential.[26] They contend the differential should be based on the rates that would be in place under the new rules.[27] These parties also claim that USTA's proposal would result in LEC-specific differentials. USTA maintains that LEC-specific cost characteristics are already reflected as a result of the elimination of the distinction between the traffic sensitive and non-traffic sensitive classification in Part 36 and the combination of Line Termination, Intercept, and Local Switching into a single rate element in Part 69. NECA suggests, in the alternative, that we adopt USTA's proposal.[28] Bell Atlantic urges us to recalculate the LS1/LS2 price differential, regardless of whether the results are company-specific or reflect a nationwide average.[29]

15. US Sprint suggests that the differential be based on rates developed under the new rules. US Sprint contends that a discount based on historical rates will bear little relationship to 1988 costs and rates and may result in a substantial decrease in the absolute value of the differential. US Sprint suggests that we use a hypothetical differential based on the new rules and phase-out that differential over the targeted five-year period.[30]

16. AT&T responds that MCI and US Sprint fail to understand the decision to phase-out the LS1 discount. AT&T says the transition rules were supposed to start decreasing the discount in 1988 from 1987 levels and to calculate a consolidated discount for the combined switching rate element based on the existing combination of end office access elements.[31] Therefore, AT&T maintains that its calculation of the consolidated discount using 1987 rates was proper.[32] AT&T adds that it does not oppose the proposals of NECA, GTOC, and USTA to calculate company-specific discount levels.[33]

3. Discussion

17. We will revise our prescribed phase-out schedule for the LS1 discount. The petitions demonstrate that implementation of the discounts we prescribed will actually result in an increase, at least in the initial years, in the LS1 discount. Such a result contravenes our objective of reflecting the phase-out of the former Category 6 COE separations procedures, including the elimination of both the NTS/TS distinction and the TWFs. We have reevaluated the impact of the discounts we prescribed in the *Report and Order* and have determined that, contrary to our intention, these discounts will have the effect of increasing the aggregate LS1 discount in the initial years. Based on our analysis of the projected savings under the 1988 tariffs, we have recalculated the discounts for the LS1 rate subelement.

18. We based our recalculations of the LS1 transition factors (which reflect the discount amounts) on cost and demand forecasts filed by the local exchange carriers (LECs) in support of their 1988 annual access tariff filings. We first determined the 1988 LS1 discount amount that would result if the discount were not being phased-out. We next phased-down the discount amounts to zero on a straight-line basis over a five-year period.[34] The new factors become effective on April 1, 1989. Therefore, we have only computed the factors for 1988 to 1992. For those years, the new LS1 transition factors shall be as follows:

From April 1, 1989 to June 30, 1990 -- .877
From July 1, 1990 to June 30, 1991 -- .921
From July 1, 1991 to June 30, 1992 -- .960
From July 1, 1992 to June 30, 1993 -- .995

We believe this new phase-out schedule for the discounted LS1 rate element will reflect both the impact of combining the three former end office elements and the five-year phase-out schedule for the former separations Category 6 COE. We therefore grant the petitions on this issue to the limited extent indicated herein.

19. We decline, however, to grant Pacific's request that we further aggregate the access elements by combining the Information element in the new Local Switching element. Costs that are apportioned to the Information element are indirectly reflected in interexchange carrier directory assistance charges. Elimination of a separate access element would be likely to result in interexchange carrier charges that are less cost causational. Thus, the original reasons for establishing a separate Information element are still valid. No change is required to achieve conformance with the revised Separations Manual. The Information element includes investment in Category 1 COE. We did not consolidate that category with other separations categories when we revised the separations categories. Therefore, we will not adopt Pacific's suggestion.

20. We also decline to adopt Bell Atlantic's suggestion that Feature Group B service should not be discounted because the use of Feature Group B for terminations is identical to Feature Group D termination service. As we stated in *Third Report and Order*, in Docket No. 78-72,[35] the connections provided under Feature Group B service are inherently different from those provided under Feature Group D service. We therefore believe that Feature Group B service should continue to be discounted in unconverted offices through the application of the LS2 nonpremium rate and should continue to be discounted in converted offices for the next five years through the the LS1 discounted rate.

B. General Support Facilities

1. Background

21. Under the former Part 69 rules, General Support Facilities (GSF) was divided into individual categories, including Land, Buildings, and Vehicles. Each category was apportioned on the basis of unique allocation factors. The *Report and Order* [36] adopted a revised procedure which combines these individual categories under GSF and apportions the investment among the Interexchange and Billing and Collection categories and the access elements on the basis of the combined investment in COE, Information Origination/Termination Equipment (IOT), and Cable and Wire Facilities (C&WF), excluding Category 1.3 C&WF.[37] Although several parties proposed the inclusion of Category 1.3 C&WF in the allocation factor for GSF, we determined that the inclusion of Category 1.3 C&WF could apportion excessive GSF costs to the Carrier Common Line Element. We observed that: "Although additional Common Line costs are usually recovered through the Carrier Common Line element, such costs can sometimes affect the level of subscriber line charges that are subject to a cap. In these circumstances, any doubts with respect to the apportionment of indirect expenses should be resolved against apportioning expenses to Common Line".[38]

2. Positions of Parties

22. Western Union, AT&T, and SATNET seek reconsideration of our revised allocation methods for GSF. Western Union argues that we did not consider the impact that the exclusion of Category 1.3 C&WF would have on special access. Western Union further argues that, based on the 1988 Tariff Review Plan data, the revised allocation procedures will shift $1.1 billion from the Common Line element to the Traffic Sensitive and Special Access elements thereby reducing Common Line by 44 percent and increasing Special Access by 63 percent.[39] Western Union maintains that this allocation to Special Access is not based on any rational allocation procedure but, rather, is based on a concern for the bottom-line revenue requirement impact on Common Line.[40]

23. Western Union recommends that we adopt one of its five alternative proposals[41] but favors two approaches which involve the use of a modified Big Three Expenses allocation factor.[42] Western Union states that the use of its first suggested modified Big Three Expenses approach, which would exclude Account 6410, Cable and Wire Facilities Expenses, would approximate the results achieved under the former Part 69 rules. Western Union maintains that the logic behind the exclusion of Account 6410 is that most C&WF is not located in carrier-owned buildings, although C&WF does make direct use of other GSF such as vehicles and work equipment. Western Union also maintains that Account 6310, IOT Expenses, could be excluded for the same reason and that the exclusion of Account 6310 would compensate for the complete removal of Account 6410. In its second modified Big Three Expenses proposal, Western Union recommends that the COE expenses in Accounts 6210 and 6230 be given a double weighting in the calculation of Big Three Expenses.[43] Western Union contends that double weighting is appropriate because these accounts have a larger land and building component in their costs than the remaining accounts, since the equipment is housed in company-owned buildings. It states that this method produces results that are similar to its first modified Big Three Expenses approach.

24. AT&T requests that we allocate GSF on the basis of a slightly different modified Big Three Expenses.[44] AT&T contends that the network plant-based allocation factor assigns no GSF investment to the Billing and Collection category even though GSF assets are used extensively in the LECs' billing and collection operations.[45] AT&T further contends that under the new rules, no GSF assets are assigned to Billing and Collection, whereas under the old rules, a proportionate share of GSF assets were assigned to Billing and Collection. As a result, AT&T contends, ap-

proximately $180 million of GSF-related revenue requirements that should be attributed to Billing and Collection are currently assigned to the access rate elements.[46]

25. Several parties oppose the allocation of GSF investment on the basis of the Big Three Expenses, arguing that such an approach would cause unacceptable shifts in revenue requirements to Common Line and would unduly complicate the access process.[47] These parties specifically cite AT&T's estimated revenue requirement shifts of $317 million to the Common Line and $177 million to the non-access elements. US West, USTA, BellSouth, SW Bell, and United contend that the use of the Big Three Expense factor would involve circularity because certain accounts included in that factor are allocated on the basis of GSF.[48] SNET maintains that the record of this proceeding does not contain any data or comments which suggest that GSF should be allocated on the basis of the Big Three Expenses rather than on the basis of investment. US West, SW Bell, and SNET suggest that we conduct a thorough evaluation of the impact of the Part 69 rule changes by reviewing industry data in a full Rule Making proceeding.[49]

26. BellSouth and SNET argue that AT&T has contested the new Part 69 rules too early because the rules had not become effective when AT&T filed its Petition for Reconsideration.[50] On the other hand, US West and Texas Cooperative claim that AT&T's opposition to the new Part 69 rules is too late because AT&T fails to explain why it did not raise its arguments before this filing.[51] Texas Cooperative claims that AT&T's argument against our new allocation methodology for GSF is based on the results of the application of this methodology in the LECs' 1988 access filings, which, Texas Cooperative claims, does not justify a revision of our rules. Texas Cooperative further claims that AT&T is seeking to revise our rules simply because it believes that the new rules do not allocate enough revenue requirement to the Billing and Collection category. Texas Cooperative also notes that AT&T acknowledges that the new Part 69 treatment of GSF is consistent with the Part 36 treatment of GSF.[52]

27. SW Bell argues that the accounts that AT&T suggests be removed from a Big Three Expenses allocation for GSF cannot be excluded from the allocation factor because those accounts represent a significant portion, perhaps 10 percent, of its Big Three Expenses.[53] SW Bell also argues that AT&T's proposal is premised on Billing and Collection revenue requirement shifts caused by the revised Revenue Accounting Expenses allocation procedures we adopted in Docket No. 80-286.[54] SW Bell further states that any attempt to neutralize the effects of Docket No. 80-286 separations changes is beyond the scope of this proceeding. GVNW states that it analyzed data collected from fifteen of its companies based on the proposals of Western Union and AT&T. GVNW states that the results show that an expense-based allocation factor for GSF will exacerbate the current overallocation to the Billing and Collection category.[55] GVNW further states that all these companies would have experienced a substantial increase in the costs allocated to the Billing and Collection category using the alternatives proposed by AT&T and Western Union. United contends that although AT&T estimates a $5 million increase in United's Common Line revenue requirement for its Tier 1 companies, it estimates an $8.2 million increase in its Common Line revenue requirement, which is an approximately 39 percent increase.[56] USTA contends that, based on data collected from a sample of its Tier I companies, the petitioners' proposed modifications to the allocation of GSF could result in an increase in the Carrier Common Line revenue requirement of over $400 million.[57]

28. NYNEX maintains that our revised Part 69 rules reflect a simplified process which seeks to apply reasonable allocation factors intended to avoid the costly and burdensome studies necessary to identify costs for direct assignment. NYNEX suggests that AT&T has not addressed the full effects of its proposal on the costs allocated to other access rate elements of interest to other customers. NYNEX also maintains that the shifts in costs that AT&T claims were unexpected were evident at the time the original data were presented in this proceeding and became a part of the record.[58] In response to Western Union's petition, NYNEX contends that Western Union had an opportunity to submit its arguments in the record of this proceeding but chose not to do so.[59] MCI states that it would support AT&T's proposal that GSF be allocated on the basis of Big Three Expenses only if it would solve the problem of "overallocation" to Special Access. Otherwise, MCI supports Western Union's proposal.[60]

29. AT&T replies that no party disputes that the allocation methodologies it proposes will result in an assignment of GSF that reflects cost-causation principles. AT&T also maintains that the arguments raised against its proposal are merely procedural and technical in nature and do not justify reverting to the former Part 69 rules.[61] AT&T proposes two alternatives to address the oppositions to the use of the Big Three Expenses factor to allocate GSF among the regulated rate elements. AT&T proposes that the Big Three Expenses factor be used only to allocate GSF costs to the Billing and Collection category. AT&T further proposes that the investment-based allocation factor be used to assign the remaining GSF costs among the regulated access rate elements. AT&T contends that this approach would remove the Billing and Collection-related GSF costs proportionately from each regulated rate element, would ensure that no costs would shift between those rate elements, and would reduce Common Line costs.[62] AT&T proposes to solve the circularity problem by removing certain expenses in Accounts 6110 and 6610, and a portion of Account 6620, from the Big Three Expenses factor used to allocate the GSF assets to the Billing and Collection category.[63] AT&T responds to US West's assertion that Accounts 6120 and 6560 are also part of the circularity problem by stating that Account 6560 is not included in the Big Three Expenses.[64] Regarding Account 6120, AT&T asserts that it had previously recommended eliminating Account 6120, General Support Expenses, from the Big Three Expenses.[65]

30. The claim that its petition is too early is unfounded, AT&T asserts, because the LECs used the revised Part 69 rules to determine the access rates that are included in the annual access filings filed on October 2, 1987. AT&T also maintains that its petition is not too late because it raises new facts that were unknown and could not have been known by the petitioners at the time of the last submission.[66] AT&T argues that its petition illustrates cost shifts from the Billing and Collection Category of such magnitude that it could not have anticipated or foreseen purely on the basis of the record in this proceeding but, rather, only after reviewing the annual access tariffs filed

on October 2, 1987. Thus, AT&T argues, it has presented a new fact in a timely manner which warrants reconsideration.

31. Western Union replies that none of the carriers opposing its proposal defends the new rule as a reasonable cost allocation procedure. Western Union submits a chart which compares the allocation of GSF under the former rules, the new rules, and its two alternative modified Big Three Expenses proposals.[67] It claims that based on its calculations, its two alternatives are the best solutions. In the absence of any other acceptable simplified formula, Wester Union suggests that we revert to the former rules.

3. Discussion

32. The changes in the USOA and the Separations Manual that relate to GSF are so extensive that a new formula for the apportionment of these costs was necessarily required. Such investment cannot be directly attributed to particular services and accordingly must be apportioned on the basis of some general allocator. We are not persuaded that any of the alternative allocators proposed by the petitioners would produce results that are more equitable or more cost causational than the allocator that we adopted.[68] The Western Union proposals would indirectly result in shifting some burdens from business to residential customers without producing greater precision in the allocation process. The AT&T proposals would change procedures that would provide a long-term solution to respond to a temporary allocation problem.[69] AT&T is in the process of replacing exchange carrier billlling and collection services with its own billing mechanisms. If exchange carriers do not obtain a significant amount of other third party billing and collection business, the apportionment of costs between the access elements and the billing and collection category will not have a great deal of long term significance. We accordingly decline to adopt any of the suggested changes in the GSF apportionment.

C. Computer Expenses Related to Billing and Collection

1. Background

33. Under the former Part 31 USOA and the former Part 69, all computer expenses related to Revenue Accounting Expenses were recorded in Account 662 and were included in the Billing and Collection category. Under the new Part 32 USOA, some of the computer expenses related to Revenue Accounting Expenses are recorded in Account 6623, Customer Services, but some of the computer related expenses previously recorded in Account 662 are recorded in Account 6124, General Purpose Computer Expenses, and Account 6724, Information Management. Under the new Part 69 rules, the interstate portion of the Revenue Accounting Expenses in Account 6623 is assigned to the Billing and Collection category, Account 6124 is allocated on the basis of the allocation of GSF, and Account 6724 is allocated on the basis of the Big Three Expenses.[70]

2. Positions of the Parties

34. AT&T asserts that under the new Part 32 accounting rules, Accounts 6124 and 6724 contain a high proportion of computer expenses related to Billing and Collection but the new Part 69 allocation factors attribute very little of the costs in those accounts to the Billing and Collection category. AT&T claims that the LECs' 1988 access filings disclose that approximately $80 million of the computer expenses related to Billing and Collection are currently recorded in Accounts 6124 and 6724.[71] AT&T further claims that under the former Part 69 rules, all those costs would have been directly assigned to the Billing and Collection category but, under the new rules, only approximately $3 million of the expenses in those accounts are allocated to that category.[72] As a result, AT&T claims that the new rules will shift approximately $77 million of computer expenses related to Billing and Collection to the regulated access rate elements.[73]

35. AT&T asserts that the new rules will allocate expenses that are incurred in providing detariffed billing and collection services to regulated access services. AT&T further asserts that the new rules will allow the LECs' billing and collection operations to use the land, buildings, office equipment, and computers included in the GSF category and the computer expenses in Accounts 6124 and 6724 without cost. As a result, AT&T claims, the LECs will be using their regulated services to recover 40 percent of the costs of their detariffed billing and collection operations.[74] A shift of this magnitude, AT&T asserts, contravenes this Commission's goal in this proceeding to avoid significant revenue requirement shifts. AT&T claims that the misallocation of billing and collection costs will create a double recovery for LECs because the LECS are under contract with AT&T for recovery of their billing and collection costs. If those costs are assigned to the access rate elements, AT&T asserts, the LECs will collect their billing and collection costs twice -- once under contract and again through access charges.

36. AT&T argues that the broad allocation factors for Accounts 6124 and 6724 should be abandoned and the LECs should be required instead to maintain records of their detariffed billing and collection expenses in those accounts and to directly assign those expenses to the Billing and Collection category. US West, USTA, SW Bell, NECA, Pacific, and NYNEX oppose AT&T's suggestion, contending that this proposal contravenes our objective of simplifying the accounting and separations process because it would require the LECs to perform special studies to identify the expenses in these accounts.[75] These parties are also concerned about the effects such a proposal would have on other access elements and on the Billing and Collection category.

37. Bell Atlantic responds that AT&T's claim of underassignment of costs to the Billing and Collection category is erroneous. Bell Atlantic contends that although its actual interstate Billing and Collection costs for January through August 1987 was $38 million,[76] it forecasted that those costs for 1988 would be $27 million. Bell Atlantic contends that this decrease reflects the reduction in billing and collection services currently obtained by AT&T from the LECs. Bell Atlantic further contends that as AT&T performs more of its own billing and collection, those costs will decline even further. Bell Atlantic opposes AT&T's proposal because it would require special studies to allocate the accounts by type of service; Bell Atlantic argues that the existing Part 69 and Part 36 rules do not provide such records. Bell Atlantic contends that such special studies would be costly and complex.

38. GVNW opposes AT&T's proposal because of the impact on small companies. GVNW conducted studies for fifteen companies which it claims illustrates the overassignment of interstate costs to the Billing and Col-

lection category. GVNW contends that this overassignment will probably result in nonrecovery of some corporate expenses that were formerly assigned to the access elements. GVNW further contends that, because the LECs bargained in good faith to recover their billing and collection costs under their contracts with AT&T, the assignment of other costs to the Billing and Collection category would result in the LECs' inability to recover those costs. GVNW also contends that, because the small companies handle less than 10 percent of message volumes, they can not dictate contractual terms to AT&T.[77]

39. BellSouth responds that AT&T should suggest revisions of Part 32 rather than Part 69 to correct the problem of the appropriate allocation factor for the computer expenses related to Billing and Collection. Bell South suggests that, since we are monitoring the effects of our rule revisions, we should wait until we have those results before us to determine whether unintended impacts have resulted rather than acting on speculation.[78] On the other hand, United contends that AT&T's argument should be addressed in context of the revised Part 36 rules. Texas Cooperative believes that AT&T's arguments should be addressed in the context of both the revised Part 32 and Part 36.[79]

40. Texas Cooperative also states that any shifts in the allocation of costs relating to Billing and Collection can be addressed through contract negotiations. SW Bell contends that any costs that are presently shifted to Billing and Collection may not be recouped from customers purchasing billing and collection services because many LECs are committed to billing and collection contracts. Therefore, SW Bell suggests that we should reject AT&T's attempt to mitigate revenue requirement shifts for some companies, while aggravating shifts for others. NECA responds that AT&T's proposal is inconsistent with its earlier position, in which AT&T stated that parties could have included price adjustment clauses in their contracts, because they knew at the time of contract negotiations that separations procedures were subject to modification. NECA asserts that AT&T was equally aware and could have included price adjustment clauses in the same contracts.[80]

41. NYNEX responds that AT&T's assumptions regarding the impact of revenue requirement shifts are exaggerated. NYNEX states that the reduction in billing and collection revenue requirements is less than 1 percent of the total interstate revenue requirements.[81] NYNEX also responds that AT&T's assertion that the new rules will shift costs from the detariffed billing and collection operations to the regulated access services is incorrect. NYNEX states that if billing and collection activities for the ICs were not performed by the LECs, the LECs would still incur costs for other billing and network-related activities.[82] Double recovery of costs is not an issue, NYNEX contends, because the contract between AT&T and NYNEX illustrates that the rates for billing and collection are based on the value to AT&T, not NYNEX's costs. NYNEX also asserts that basing Part 69 costs for Billing and Collection on contract rates is not logical. NYNEX asserts that, based on AT&T's arguments, if the negotiated Billing and Collection contract rates changed a certain amount, interstate revenue requirements would be adjusted correspondingly. In addition, NYNEX asserts that Billing and Collection cost apportionments would vary among LECs depending on the billing and collection rate levels negotiated with AT&T. In addition, NYNEX also asserts that billing and collection service provided to the ICs is a declining service, as AT&T performs more of the billing and collection functions. NYNEX asserts that only a small portion of the LECs' costs can be eliminated when billing and collection activities are curtailed and that the majority of costs that remain will be recovered in the LECs' regulated services.[83]

42. AT&T replies that no party argues that the application of our Part 69 rules to billing and collection costs can be justified as reflective of cost-causation principles. Moreover, AT&T replies that no party disputes that the allocation methodologies it proposes will result in an assignment of Accounts 6124 and 6724 expenses to the Billing and Collection category that reflects cost-causation principles.[84]

3. Discussion

43. We decline to adopt AT&T's suggested modification of Part 69 procedures for the apportionment of the computer expenses related to billing and collection. The AT&T proposal would introduce additional complexity in order to solve a temporary problem of uncertain magnitude. AT&T has not presented a sufficient justification for modifying a final decision.

D. Circuit Equipment

1. Background

44. The revised Section 69.306(e) provides:

> COE Category 4 (Circuit Equipment) shall be apportioned among the interexchange category and the Common Line, Limited Pay Telephone, Dedicated Transport, Common Transport and Special Access elements. COE 4 shall be apportioned in the same proportion as the associated Cable and Wire Facilities.[85]

The C&WF categories that are used for purposes of access apportionments are described in Section 69.305.[86]

2. Positions of Parties

45. SW Bell requests clarification of these procedures, stating that it has interpreted the new rules as requiring that all Interexchange Circuit Equipment costs identified pursuant to the Separations Manual as interstate private line costs be allocated to the Special Access element and that all Interexchange Circuit Equipment costs identified as Message be assigned to the Transport elements. Basically, SW Bell argues that when it can directly identify a certain amount of Interexchange Circuit Equipment as Interstate Private Line, the investment in those circuits should be directly assigned to the Special Access element, regardless of the proportion of Interexchange C&WF revenue requirement assigned to that element. SW Bell maintains that its preferred procedure would provide the most equitable assignment of Category 4.23 COE investment because allocation on the basis of the relative allocation of investment in C&WF would ignore the fact that although Interexchange C&WF is still allocated between the jurisdictions on the basis of circuit miles, we eliminated the mileage component of the jurisdictional allocation factor for Interexchange Circuit Equipment.[87] SW Bell argues that the assignment of Interexchange Circuit

Equipment costs on the basis of the absolute amounts of Interexchange C&WF would ignore the impact of circuit terminations for purposes of developing access charges and would be inconsistent with jurisdictional cost allocation procedures.[88]

46. Western Union opposes SW Bell's interpretation, arguing that the LECs should be required to follow the "literal" language of the rules. Western Union argues that the Part 69 rules need not follow Part 36 rules and states that the Access Charge Rules do not necessarily require the direct flow-through of separations results.[89] Moreover, Western Union contends, the issue of the use of circuit terminations warrants further investigation because the rules do not define this term and because the LECs are apparently applying a variety of definitions. SW Bell replies that we have adequate information to assess the impact of its procedure.

47. SW Bell also responds that its analysis of data filed with the Commission illustrates that substantial changes in the historic revenue requirement allocations would occur if Western Union's interpretation is upheld.[90] Specifically, SW Bell contends that Western Union's interpretation would produce a 28 percent increase in historic Common Line assignments, a 54 percent decrease in Transport assignments, and a 30 percent decrease in Special Access assignments.[91] SW Bell also responds that Western Union is incorrect in its assertion that no Private Line category is identified in Part 36. SW Bell asserts that regardless of how the groupings are named in Part 36, COE and C&WF are grouped into Message and Private Line categories to facilitate allocations.[92] SW Bell further adds that although the Part 36 rules may refer to categories, it does not believe that we meant to exclude subcategories, subsidiary categories, and classes of circuits in light of the significant shifts in revenue requirements that would result from Western Union's definition of categories.

3. Discussion

48. Section 69.306(e) means that Circuit Equipment that is used in conjunction with a particular cable or wire facility will be assigned or allocated in the same manner as the associated facility. Circuit Equipment that is used with an ordinary subscriber line is assigned to the Common Line element. Circuit Equipment that is used with a WATS access line or a private line is assigned to the Special Access element. Circuit Equipment that is used with trunks that connect end office switches or that connect end office and interexchange switches is assigned to Transport. Circuit Equipment used with trunks that are not classified as "origination" or "termination" for purposes of the Part 69 access charge rules are assigned to the interexchange category. SW Bell does not appear to disagree with this interpretation and apparently does not propose any change in this procedure. Accordingly, the request for clarification appears to be satisfied.[93]

E. COE Direct Expenses

1. Background

49. The *Notice* [94] proposed to allocate COE direct expenses on the basis of the associated COE investment. Thus, Operator Systems expenses would be allocated on the basis of Operator Systems investment, Switching Equipment expenses would be allocated on the basis of Switching Equipment investment, and Circuit Equipment expenses would be allocated on the basis of Circuit Equipment investment. In the *Report and Order*, [95] we decided instead to allocate COE direct expenses on the basis of total COE investment. We revised our original proposal to ensure conformance with Part 36 procedures, which allocate COE expenses between the jurisdictions on the basis of the total COE investment.[96] In addition, the data submitted in this docket indicated that this modification would significantly reduce the shift in revenue requirements between the Switching and Special Access elements.

2. Positions of Parties

50. Western Union and SATNET contend that this modification of our original proposal will shift substantial message costs to Special Access and they request that we adopt instead our original proposal to apportion these costs on the basis of associated investment. Western Union asserts that several LECs have warned of substantial revenue shifts from switched access to special access in the calculations of their revenue requirements for the 1988 access tariffs.[97] SATNET states that a significant shift in revenue requirements has occurred, but is not easily quantifiable. Western Union asserts that this unforeseen shift is due to the fact that Special Access does not employ two of the three categories of COE, *i.e.*, Switching equipment and Operator Systems equipment, that are included in the total COE investment allocation factor. Moreover, Western Union contends that this situation is exacerbated by the fact that expenses, as a percentage of investment, are much higher for the equipment employed by switched access than by special access. Thus, Western Union concludes, by aggregating these expenses, the rule requires Special Access ratepayers to pay a portion of Switched Access costs. Western Union maintains that the benefits of simplifying the procedures by requiring the use of a total COE investment allocation factor is outweighed by the cost of the resulting distortions such a method would produce. Western Union contends that LEC assertions that an associated COE investment allocation factor would be burdensome are unjustified because they used this methodology in their earlier access tariff filings. Western Union acknowledges as valid the LECs' concern that a lack of conformance between Part 36 and Part 69 would create a possibility of nonrecovery of some COE expenses[98] but states that this problem could be corrected by either revising Part 36 or allowing for a true-up of access costs.

51. NYNEX, SW Bell, and SNET oppose the petitions of Western Union and SATNET. NYNEX asserts that Western Union fails to demonstrate how its proposed allocation factor will affect costs and rates, other than those for Special Access. NYNEX notes that Western Union provides no evidence that COE expenses are incurred in lesser proportions for Special Access COE investment than for Switched Access. In particular, NYNEX cites the costs of high capacity Special Access COE transmission equipment.[99] SNET notes that we modified the rules to apportion COE direct expenses based on total COE to conform the Part 69 rules to Part 36 and we should decline to reconsider that decision.[100]

52. SW Bell contends that Western Union's proposal contravenes the objectives of this proceeding to simplify COE expense allocations. SW Bell also contends that its 1988 access filings demonstrate that under the former Part

69 procedures, approximately 23 percent of the COE expenses were allocated to Special Access and that under the revised procedure, approximately 22 percent of those COE expenses will be allocated to Special Access.[101] SW Bell notes that the proposal of Western Union and SATNET would allocate only approximately 13 percent of those expenses to Special Access, which would seriously deviate from the distribution of revenue requirements under the former Part 69 procedures. SW Bell contends that the data submitted in this docket indicated that, under the new procedure, switching costs would increase by 2.3 percent and Special Access costs would increase by 1.1 percent, whereas under the proposal of Western Union and SATNET, switching costs would increase by 20.5 and Special Access costs would decrease by 3.6 percent.[102] In its Reply, Western Union maintains that adoption of its proposal would not shift revenue requirements to the Common Line element as anticipated by this Commission but, rather, would merely preserve the status quo by maintaining the associated COE investment allocation factor that was in effect under the former Part 69 rules.[103]

3. Discussion

53. We decline to adopt Western Union's suggestion that COE direct expenses be allocated on the basis of the associated COE investment rather than on the basis of total COE investment. The allocation of these expenses on the basis of total COE investment is consistent with Part 36 procedures. We believe that since conformance of the Part 69 rules to the new Part 36 rules is an overriding goal of this proceeding, we should strive to maintain consistency between those sets of rules whenever possible. Moreover, the use of associated COE investment allocation factor is a more complex procedure than the use of a total COE investment allocation factor. We do not believe that any additional precision in cost allocation results that the associated COE allocation factor may yield outweighs the undue complexity and added burdens such an approach would require. We accordingly deny the petitions to reconsider this apportionment.

F. Allocation of Other Investment

1. Background

54. The former Part 69 rules included equal access costs in the Local Switching element. Several waivers were granted to recover these costs through a separate rate element pending completion of the proceeding we instituted in Docket No. 78-72.[104] The *Notice* proposed to continue to assign these costs to the Local Switching element.[105] The *Report and Order*, declined to adopt a separate rate element, stating that our decision to assign equal access costs to the Switching element in this Rule Making did not supersede the existing waivers.[106] We also stated that our decision would not foreclose a different assignment of equal access costs in Docket No. 78-72. The *Notice* also proposed to continue to include equal access costs in the allocation of Other Investment.[107] The *Report and Order* adopted this proposal over the objections of several LECs.[108]

2. Positions of the Parties

55. SW Bell and USTA maintain that the new rules could result in the allocation of certain loadings related to equal access to the Local Switching element as a result of including equal access investment in the allocation factor for Other Investment. They contend that this excessive loading will distort the interstate cost allocations and will cause volatility in other interstate rates as equal access costs are amortized over eight years.[109] These parties also contend that the improper loadings will result in a reduction of the costs allocated to the Equal Access rate element in cases in which a waiver has been granted and a shift in investment and expenses from the Local Switching or Equal Access rate element to other elements. No party opposes the exclusion of equal access from the allocation factor for Other Investment.[110]

3. Discussion

56. We decline to adopt the proposal of SW Bell and USTA that equal access costs be excluded from the allocation factor for Other Investment. The proposed refinement would not be likely to have a substantial impact upon charges for other elements. Moreover, we find that the overheads in these accounts are equally related to equal access investment and other operating investment. Thus, we decline to amend the adopted rule.

G. Allocation of Accounts 2002 and 2003

1. Background

57. Pursuant to the new Separations Manual, the investment in Account 2002, Property Held for Future Telecommunications Use, and Account 2003, Telecommunications Plant Under Construction - Short Term, is allocated between the jurisdictions on the basis of total investment in Telecommunications Plant in Service (TPIS).[111] The new Part 69 rules require that this investment be apportioned among the Interexchange and Billing and Collection categories and the appropriate access elements in the same proportion as the associated investment.[112]

58. In response to the *Notice*, several parties proposed that carriers be given the option of allocating the investment in these accounts between the access elements and categories on the basis of TPIS. The *Report and Order* declined to adopt this approach, stating that its adoption was not required to achieve conformance with the revised USOA or the new Separations Manual and that the record had not demonstrated that the burdens imposed by the associated investment procedure outweigh the uncertainties that would be created by introducing optional apportionment procedures. We added, however, that we would consider waiver requests in the appropriate cases.[113]

2. Positions of the Parties

59. USTA and Pacific state that the new procedures should be changed to require allocation of the investment in Accounts 2002 and 2003 on the basis of total TPIS because such an approach would conform to Part 36 procedures and because the current procedures require carriers to perform special studies.[114] USTA requests that carriers be allowed the option of using total TPIS or associated TPIS. USTA claims that this option would insure that the smaller LECs are not burdened with unnec-

essary regulatory costs.[115] AT&T and MCI oppose this change, maintaining that the complexity argument does not warrant reconsideration of our decision.[116]

3. Discussion

60. We grant these petitions and will require the allocation of the investment in Accounts 2002 and 2003 on the basis of TPIS, rather than on the basis of the associated investment. The Part 69 allocation of this investment on the basis of TPIS would be consistent with Part 36 procedures, which requires the allocation of this investment between the jurisdictions on the basis of TPIS. In addition, the associated investment allocation factor requires carriers to perform costly and complex special studies to determine in which plant accounts the plant held for future use and the plant under construction will likely be included. Such complexities and burdens would contravene our objective of simplifying our procedures whenever possible. Moreover, the associated investment approach is flawed because the use of the plant will not necessarily match that of plant already in service. Therefore, the use of an associated investment allocation factor will not necessarily yield accurate cost allocations among the access elements. We therefore believe that allocation of these accounts on the basis of TPIS will yield results that will be as representative of the actual use of this plant and will be less burdensome and costly to implement.

H. Inclusion of Accounts 2004 and 2005 in Net Investment

1. Background

61. The *Notice* proposed to define Net Investment to include Account 2004, Telecommunications Plant Under Construction - Long Term, and Account 2005, Telecommunications Plant Adjustment.[117] The *Report and Order* changed the definition to exclude those accounts.[118] In an earlier decision in Docket No. 19129, we excluded these two accounts from the Bell Operating Companies' rate base.[119] In an Order released in December 1987, in Docket No. 86-497, we applied this policy to the independent telephone companies.[120]

2. Positions of Parties

62. GTOC and USTA state that, if Accounts 2004 and 2005 remain excluded from the determination of net investment, the LECs will experience significant revenue shortfalls. Specifically, GTOC contends that under the new Part 69 rule, its companies will experience an ongoing revenue shortfall of approximately $12 million.[121] SW Bell states that the inclusion of Account 2005 in the rate base was formerly addressed on a case-by-case basis, and argues that we should continue that practice.[122] These parties also maintain that they have not had an opportunity to address this modification and, therefore, have not been able to plan for any resulting revenue shortfalls.

63. Western Union, MCI, and Ad Hoc object to these petitions, contending that our decision in Docket No. 19129 established that the inclusion of long-term plant in the rate base would unduly burden ratepayers with the cost of investment that would not become used and useful for several years. Western Union maintains that the principle underlying this decision is to avoid inflating the rate base by merger and acquisition transactions from which the ratepayer derives no tangible benefits.[123] MCI states that when plant acquisitions arise, the difference is treated as below-the-line so that ratepayers do not bear any burden of the inflated acquisition costs.[124] Ad Hoc states that we have never deferred to the USOA treatment of Accounts 2004 and 2005 costs in computing access charges.[125]

3. Discussion

64. We deny the requests for reconsideration of our decision to define Net Investment to exclude Account 2004. In the *Rate Base Report and Order*, [126] we determined that the policies of Docket No. 19129, which required the exclusion of Account 2004 investment from the rate base, remain sound. Moreover, we noted that this policy reflects an appropriate balance of incentives for companies to complete construction projects in a timely manner and the inputing of interest during construction to compensate investors for funds used during the construction period. Moreover, in Docket No. 19129, we concluded that the costs associated with long-term projects should not be placed on current ratepayers, because that would be unduly burdensome and unreasonable and would contravene the public interest.[127] The considerations that led us to exclude long-term plant under construction from the rate base necessitate the exclusion of such plant from the definition of Net Investment in Part 69, because Net Investment is the investment on which a carrier earns its rate of return. A contrary decision would result in the abrogation of our decisions in Docket Nos. 19129 and 86-497. We therefore, decline to reconsider our decision regarding Account 2004.

65. The *RateBase Report and Order* [128] adopted our original proposal to exclude Account 2005 from the rate base but to grant exceptions to permit the inclusion of this account in appropriate cases. Accordingly, Account 2005 should generally be excluded from net investment. We will allow investment in Account 2005 to be included in the definition of net investment, however, in those limited cases in which the Common Carrier Bureau has granted a waiver to allow the inclusion of Account 2005 in the rate base. Such an approach will ensure that our Part 65 and Part 69 policies are consistent. In addition, we will amend Part 69 to provide that in cases in which a waiver has been granted to allow Account 2005 to be included in the rate base, the investment in that account shall be allocated among the access elements and categories on the basis of TPIS. We believe such an allocation methodology will best reflect the actual use of acquired plant.

I. Allocation of Gross Receipts Taxes

1. Background

66. The former Part 69 procedures apportioned state income taxes and state gross receipts (or gross earnings taxes) that are collected in lieu of corporate income taxes, among the Interexchange and Billing and Collection categories and the access elements in the same proportions as the combined investment in Station Equipment, Outside Plant (OSP), COE, and Land and Buildings investment attributable to property that is located within the state that imposed the tax. The *Notice* proposed a new formula for the apportionment of tax expenses. We also solicited suggestions for formulas that either more closely parallel the former Part 69 rules or propose alternative ap-

proaches.[129] Ameritech and SW Bell proposed that gross receipts tax expenses be allocated on the basis of the receipts on which those taxes are levied. Ameritech argued that the apportionment of gross receipts tax expenses in this manner would better reflect cost-causation principles and would be more consistent with both the apportionment of income tax expense and the manner in which revenue is reported in our rate-of-return monitoring plan. NYNEX proposed that gross receipts taxes be directly assigned whenever possible. The *Report and Order* apportioned these taxes among the Interexchange and Billing and Collection categories and the access elements based on the approximate net taxable income applicable to each element and category.[130] These provisions do not apply to ordinary gross receipts taxes, *i.e.*, those that are not collected in lieu of income taxes, which are apportioned among the Interexchange category and Billing and Collection categories and the access elements on the basis of the allocation of Other Investment.

2. Positions of Parties

67. Ameritech argues that we have not given any valid rationale for rejecting its proposal. Ameritech also argues that the apportionment method for gross receipts taxes is incompatible with the Separations Manual which requires the direct assignment of operating taxes, including gross receipts taxes, whenever possible.[131] Moreover, Ameritech argues that the retention of this particular apportionment method for gross receipts taxes can result in intra-element anomalies under which the amount of investment assigned to an element is disproportionate to the revenue generated.[132] US West agrees with Ameritech's arguments and also replies that using different allocation factors in connection with the same tax is unsupportable. US West notes that, in Oregon and Minnesota, it is currently paying gross receipts taxes, in addition to income taxes.[133]

3. Discussion

68. We decline to adopt the proposals that we allocate gross receipts taxes on the basis of taxable receipts. The *Report and Order*[134] declined to adopt such proposals because the proposals would represent a departure from the status quo that is not required to achieve conformance. Moreover, we noted that the record did not enable us to evaluate the consequences of such a change. We stated, however, that we were not foreclosing consideration of a different treatment of gross receipts taxes if the carriers choose to file a separate petition for Rule Making. We continue to believe that a change in the allocation procedures for gross receipts taxes is not warranted on the basis of the record in this proceeding. We also note that the allocation of gross receipts taxes on the basis of net income is consistent with Part 36 procedures which allocate these taxes on the basis of net plant because carriers' authorized income level is based on net plant investment. Thus, the current procedures are in closer conformance with the Part 36 procedures than those proposed by Ameritech. We accordingly deny Ameritech's petition.[135]

J. Access Tariff Filings

1. Background

69. The *Report and Order* retained the annual access tariff filing period in lieu of several proposals for a biennial filing period.[136] We stated that such proposals exceeded the limited scope of this proceeding.

2. Positions of Parties

70. Pacific requests that the annual access tariff filing period be changed to a biennial period to give the carriers more latitude to make interim rate adjustments if necessary. Pacific believes that a biennial filing period would reduce the burden of reviewing tariff filings, as well as simplify the review process. Pacific suggests that such a filing would be consistent with the current two-year rate-of-return monitoring enforcement period and the biennial review of the prescribed authorized rates-of-return.[137] AT&T, Ad Hoc, and Western Union oppose this request because it is outside the scope of this proceeding.[138]

3. Discussion

71. We decline to change the annual access tariff filing period from annual to biennial. As we stated in the *Report and Order*, a streamlining measure such as this is outside the scope of this limited proceeding to conform the Access Charge Rules to the new accounting and separations rules.[139]

IV. OTHER MATTERS

A. Regulatory Flexibility Act

72. We certify that the Regulatory Flexibility Act[140] is not applicable to the rule changes we are adopting in this proceeding. In accordance with the provisions of Section 605 of that Act, a copy of this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration at the time of publication of a summary of this Notice in the Federal Register. As part of our analysis of the new rules adopted in this Order, we have considered the impact of proposals on small telephone companies, *i.e.*, those serving 50,000 or fewer access lines.[141] The action adopted herein will have a beneficial economic impact on all such telephone companies because the new procedures will reduce administrative burdens and will better reflect cost-causation principles. The carriers will therefore be able to develop rates that better reflect their actual costs.

B. Paperwork Reduction Act

73. We have analyzed the new rules contained herein with respect to the Paperwork Reduction Act of 1980[142] and have concluded that they will not impose new or modified information collection requirements on the public. Therefore, implementation of the new rules will not be subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

C. Erratum

74. We also make various additional changes to Part 36 of the Rules to correct certain minor errors in the *Report and Order*. These changes are listed in Appendix A.

V. ORDERING CLAUSES

75. Accordingly, IT IS HEREBY ORDERED, That the Petitions for Reconsideration or Clarification filed in these proceedings ARE GRANTED to the extent provided herein and otherwise ARE DENIED.[143]

76. IT IS FURTHER ORDERED, That the modifications of Part 69 of the Commission's Rules described above and set forth in Appendix A ARE ADOPTED effective April 1, 1989.

77. IT IS FURTHER ORDERED, That the Petition for Waiver, filed August 25, 1987 by the National Exchange Carrier Association IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

Part 69 of Title 47 of the Code of Federal Regulations is revised to read as follows:

1. The authority citation for Part 69 continues to read Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Sec. 69.205 is amended by revising para. (d) to read to as follows:

Sec. 69.205 ***Transitional Premium Charges.***

****

(d) During each of the following years the LS1 transition factor shall be:

(1) From April 1, 1989 to June 30, 1990 -- .877
(2) From July 1, 1990 to June 30, 1991 -- .921
(3) From July 1, 1991 to June 30, 1992 -- .960
(4) From July 1, 1992 to June 30, 1993 -- .995

3. Sec. 69.302 is amended by revising para. (b) to read as follows:

Sec. 69.302 ***Net Investment.***

*

(b) Investment in Accounts 2002, 2003 and to the extent such inclusions are allowed by this Commission, Account 2005 shall be apportioned on the basis of the total investment in Account 2001, Telecommunications Plant in Service.

4. In addition, the following changes are made to the *Access Charge Rules*, 52 Fed. Reg. 37,308 (October 6, 1987):

On page 37,309, Sec. 69.2(g), line 4, add "and included in Account 2410" after "Manual."

On page 37,309, Sec. 69.2(i), line 5, add "and included in Accounts 2210, 2220 and 2230" after "Manual."

On page 37,309, Sec. 69.2(l)(1), line 2, change "6223" to "6230."

On page 37,309, Sec. 69.2(q), line 6, add "and included in Account 2110" after "Manual."

On page 37,309, Sec. 69.2(r), line 6, add "and in Account 2310" after "Manual."

On page 37,310, Sec. 69.2(dd), line 6, add ", WATS" after "FX."

On page 37,312, Sec. 69.302(b)(3), line 7, change "2001" to "2110."

On page 37,314, Sec. 69.408, line 6, change "69.403" to "69.404."

FOOTNOTES

[1] * * *

[2] The following parties filed petitions for reconsideration: the Bell Atlantic Telephone Companies (Bell Atlantic), the United States Telephone Association (USTA), Pacific Bell (Pacific), and the Western Union Telegraph Company (Western Union). Western Union filed a Petition for Reconsideration and Request for Expedited Treatment on September 23, 1987. Western Union also filed a Further Petition for Reconsideration and Request for Expedited Treatment on October 14, 1987. The following parties filed petitions for partial reconsideration or clarification: Southwestern Bell Telephone Company (SW Bell), GTE Service Corporation (GTOC), Satellite Data Broadcast Network, Inc. (SATNET), the American Telephone and Telegraph Company (AT&T), and the Ameritech Operating Companies (Ameritech). The following parties filed oppositions: Western Union, SW Bell, the New England Telephone and Telegraph Company and the New York Telephone Company (NYNEX), Pacific, ALC Communications Corporation (ALC), the United Telephone System Companies (United), Bell Atlantic, AT&T, USTA, the Texas Statewide Cooperative, Inc. (Texas Cooperative), the BellSouth Corporation and the BellSouth Telephone Companies, South Central Bell Telephone Company and Southern Bell Telephone and Telegraph Company (BellSouth), GVNW Inc./Management (GVNW), the Southern New England Telephone Company (SNET), the US Sprint Communications Company (US Sprint), and the Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company (US West). The following parties filed comments: ITT Communications Services, Inc. (ITT), the International Communcations Association (ICA), the National Exchange Carriers Association (NECA), the Ad Hoc Telecommunications Users Committee (Ad Hoc), and and MCI Communications Corporation (MCI). The following parties filed replies: Ameritech, USTA, Bell Atlantic, AT&T,

SW Bell, Ad Hoc, and Western Union. The following parties submitted *ex parte* filings: Western Union on January 14, 1988, and AT&T on August 18, 1988, and August 22, 1988.

Western Union filed a Motion for Stay on November 24, 1987, seeking a stay of the effectiveness of the new Part 69 rules. The Common Carrier Bureau denied Western Union's motion on December 18, 1987. *See* Amendment of Part 69 of the Commission's Rules and Regulations, Access Charges, to Conform It With Part 36, Jurisdictional Separations Procedures, CC Docket 87-113, DA 87-1845, released December 18, 1987.

[3] Amendment of Part 69 of the Commission's Rules and Regulations, Access Charges to Conform It With Part 36, Jurisdictional Separations Procedures, CC Docket No. 87-113, 2 FCC Rcd 6447 (1987) (*Report and Order*).

[4] Amendment of Part 69 of the Commission's Rules and Regulations, Access Charges, to Conform It With Part 36, Jurisdictional Separations Procedures, CC Docket No. 87-113, 2 FCC Rcd 2673 (1987).

[5] Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board, CC Docket Nos. 78-72, 80-286 and 86-297, 2 FCC Rcd 2639 (1987) (*Separations Report and Order*), *recon. granted in part*, 2 FCC Rcd 5349 (1987), *recon. granted in part*, FCC 82-216, released August 8, 1988 (*Reconsideration Order and Supplemental NPRM*).

[6] Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone Companies (Parts 31, 33, 42, and 43 of the FCC's Rules), CC Docket No. 78-196, FCC 86-221, released May 15, 1986, 51 Fed. Reg. 43,493 (December 2, 1986).

[7] Although billing and collection for interstate services is no longer subject to tariff regulation, the costs attributable to this activity are included in the separations process and the interstate portion of such costs is assigned to the billing and collection category pursuant to the Part 69 rules. *See* Detarriffing of Billing and Collection Services, CC Docket No. 85-88, 102 FCC 2d 1150 (1986).

[8] *See* MTS and WATS Market Structure, Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72, 80-286 and 86-297, 2 FCC Rcd 5349 (1987).

[9] LS1 was the discount subelement and reflected a 35 percent discount. LS1 is being phased-out in the new Part 69 rules. The LS2 subelement contains both a premium and nonpremium (transitional) rate. The premium LS2 rate applies only to converted offices, *i.e.*, to Feature Group C and D services. The nonpremium LS2 rate applies to Feature Group A and B services provided in unconverted offices; this nonpremium rate reflects a 55 percent discount. This LS2 transitional nonpremium rate remains under the new Part 69 rules; only the LS1 discount had been changed.

[10] 2 FCC Rcd at 2642.

[11] *See Notice*, 2 FCC Rcd at 2673.

[12] In the separations process, TWFs were intended to reflect the higher cost of usage of the switch by toll calls, which are trunk side connections, rather than local calls, which are line side connections. Similarly, the LS1 discount was intended to reflect the lower cost of a line side connection in the access charge rates. The Docket 80-286 Joint Board eliminated the TWFs because it determined that with the use of modern digital swtiches, use of the switch for toll calls is no longer more costly than for local calls. *See* Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, 2 FCC Rcd 2551, 2552 (1987). Therefore, we decided that the LS1 discount must also be eliminated. This Commission determined that a gradual phase-out of the LS1 discount reflecting the elimination of the TWFs would avoid the rate shock effects of a flash cut elimination of the LS1 discount. *See Report and Order*, 2 FCC Rcd at 6457.

[13] 2 FCC Rcd at 6457, n. 106.

[14] *See* 47 C.F.R. §36.125.

[15] 2 FCC Rcd at 6457.

[16] These parties are USTA, GTOC, AT&T, Pacific, Bell Atlantic, and NECA.

[17] *See* Petition of AT&T at 11-14.

[18] *See* Petition of Pacific at 2-4.

[19] *See* Petition of Pacific at 2, n. 4.

[20] *See* NECA Supplemental Petition for Waiver, filed August 25, 1987.

[21] *See* Petition of USTA at 5; Petition of GTOC at 6-7. Pacific supports USTA's Petition. *See* Petition of Pacific at n. 1.

[22] *See* Petition of Bell Atlantic at 3-4.

[23] *See id.* at 3.

[24] *See* Opposition of US Sprint at 5; Opposition of the ALC at 4; Comments of MCI at 6-8.

[25] *See* Comments of MCI at 6-8.

[26] *See id.* at 3-4; Opposition of US Sprint at 2-3.

[27] *Id.*

[28] *See* Comments of NECA at 3-4.

[29] *See* Reply of Bell Atlantic at 3.

[30] *See* Opposition of US Sprint at 4.

[31] *See* Reply of AT&T at 10.

[32] *See id.* at 9-10, n. **.

[33] *See id.* at 9, n. **.

[34] This calculation reflects the recently revised access tariff filings periods. *See* Access Tariff Filing Schedules, CC Docket No. 88-326, 3 FCC Rcd 5495, released September 14, 1988.

[35] MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, 93 FCC 2d 241, 306 (1983), *aff'd in principal part*, National Association of Regulatory Utility Commissioners v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), *cert denied*, 103 S. Ct. 1224 (1985).

[36] 2 FCC Rcd at 6452. *See* Access Charge Rules, 52 Fed. Reg. 37,308, 37,312 (1987) (to be codified at 47 C.F.R. §69.307) (effective January 1, 1988).

[37] Category 1.3 C&WF includes subscriber or common lines that are jointly used for local exchange service and exchange access for state and interstate interexchange service. *See* 47 C.F.R. §36.154(a).

[38] 2 FCC Rcd at 6452.

[39] *See* Petition of Western Union filed October 14, 1987, at 6, Table 1.

[40] Western Union provides examples of how the allocation of GSF changes in proportion to the Common Line and Special Access elements under the former Part 69 rules and the new rules. *Id.* at 6-7, Table 2.

[41] Western Union's five proposals for the allocation of GSF are: (1) the inclusion of Category 1.3 C&WF in the current allocation factor; (2) the exclusion of Category 1.2 C&WF (interstate private line and interstate WATS lines) from the current allocation factor; (3) combined Big Three Expenses; (4) modified Big Three Expenses; and (5) an alternative modified Big Three Expenses. *Id.* at 8-10.

[42] Big Three Expenses are the combined expense groups comprising: Plant Specific Operations Expenses, Accounts 6210, 6220, 6230, 6310, and 6410; Plant Nonspecific Operations Ex-

penses, Accounts 6510, 6530, and 6540; Customer Operations Expenses; Account 6610, Marketing, and Account 6620, Services. *See* Access Charge Rules, 52 Fed. Reg. 37,308, 37,309 (1987) (to be codified at 47 C.F.R. §69.2(e)) (effective January 1, 1988).

[43] *See* Petition of Western Union filed October 14, 1987, at 10.

[44] AT&T proposes that the Category 1.3 C&WF portion of Account 6410, Cable and Wire Facilities Expenses, be excluded to reduce the allocation to Common Line. AT&T also proposes the exclusion of Account 6621, Telephone Operator Services, at least on a transitional basis, because it argues that to do otherwise would result in a 30 to 40 percent increase in the costs assigned to the Information rate element. *See* Petition of AT&T at 9-10, n. *.

[45] *See id.* at 4, n. ***.

[46] *Id.* at 3-5 and Appendices B and C .

[47] The following parties opposed the petitions regarding this issue: Pacific, NYNEX, Bell Atlantic, US West, GVNW, BellSouth, MCI, USTA, SW Bell, United, SNET, Ad Hoc, and Texas Cooperative.

[48] USTA and US West argue that the use of the Big Three Expenses as the allocation factor for GSF creates circularity because several components of the Big Three Expenses allocation factor (*i.e.*, Account 6110, Network Support Expenses; Account 6120, General Support Expenses; Account 6560, Depreciation and Amortization Expenses; Account 6610, Marketing; and Account 6620, Services) are allocated in the same proportion as GSF or on the basis of a combination of COE, IOT, CW&F, and GSF. They argue that the elimination of this circularity would require additional rule changes in the allocation of those expenses or a change in the definition of Big Three Expenses allocation factor. *See* Opposition of US West at 3, n. 5; Opposition of USTA at 5-7; Opposition of BellSouth at 5, n.6; Opposition of SW Bell at 9, n. 14; Opposition of United at 5.

[49] *See* Opposition of SNET at 6.

[50] *See* Opposition of BellSouth at 6-7; Opposition of SNET at 3-4.

[51] *See* Opposition of US West 2-3; Opposition of Texas Cooperative at 3-4.

[52] *See* Opposition of Texas Cooperative at 7, n. 12.

[53] *See* Opposition of SW Bell at 9.

[54] *See id.* at 10. *See also Separations Report and Order*, 2 FCC Rcd at 2641.

[55] *See* Opposition of GVNW at 6 and Attachment A, p. 8.

[56] *See* Opposition of United at 3.

[57] *See* Reply of USTA at 5-6 and Appendix.

[58] *See* Opposition of NYNEX at 12, nn. 16 and 17.

[59] *See id.* at 19 and 21, n. 32.

[60] Ad Hoc, ITT, and ICA also generally support Western Union's petition. *See* Comments of Ad Hoc at 3-5; Comments of ITT at 2; Comments of ICA at 2.

[61] *See* Reply of AT&T at 2-3.

[62] *Id.* at 6-7.

[63] *Id.* at 7-8.

[64] *See* Reply of AT&T at 8, n. **, citing Opposition of US West at 3, n. 5

[65] *See* Petition of AT&T at 10, n. *; Reply of AT&T at 8, n. **.

[66] *See* Reply of AT&T at 4, n. *.

[67] *See* Reply of Western Union at 10, Appendix.

[68] In its August 18, 1988, *ex parte* filing, AT&T presents data to show the impact of its proposed GSF allocation factor. This data, however, illustates the results for only the Bell Operating Companies and GTOC and does not illustrate the results for small companies which have been our concern throughout this proceeding. In its Reply, Western Union provides data on the impact of its proposed revision of the GSF allocation factor for only some of the Bell Operating Companies' study areas. Moreover, Western Union fails to show the impact of its proposal on access elements and categories other than Special Access and Switched Access. Moreover,Western Union's data indicates that implementation of either of its modified Big Three Expenses approaches would result in significant shifts in revenue requirements when compared to the results under the former Part 67 rules. *See* Reply of Western Union at Appendix.

[69] We note that, contrary to the arguments of BellSouth, SNET, US West, and Texas Cooperative, AT&T's petition is neither too early nor too late. A party may raise objections to adopted rules before they become effective if those objections are properly submitted in a petition for reconsideration filed within thirty days of the date of public notice of the order adopting such rules. *See* 47 C.F.R. §1.429(d). In addition, AT&T may properly raise objections to the originally proposed rules within the time for filing petitions for reconsideration especially since, in this case, the petition was based on facts that were not previously presented to the Commission, *i. e.*, the 1988 annual access tariff filing. *See* 47 C.F.R. §1.429(b).

[70] Access Charge Rules, 52 Fed. Reg. 37,308, 37,313, and 37,314 (1987) (to be codified at 47 C.F.R. §§§69.401(a), 69.408 and 69.409) (effective January 1, 1988).

[71] *See* Petition of AT&T at 6, n. *.

[72] AT&T states that because the model that we used to evaluate the impact of our proposed Part 69 rules did not include detail at the subaccount level, it did not permit a quantification of the amount of Revenue Accounting Expenses recorded in Accounts 6124 and 6724 or an identification of the shift in costs from the Billing and Collection category to the access rate elements that would occur under the new rules. *See id.* at 6, n. **.

[73] AT&T states that other methodologies contained in the new Part 69 rules, such as the treatment of Automatic Message Recording Equipment, contribute to the shift in costs from the Billing and Collection category to the access elements. AT&T argues, however, that the shifts attributable to those methodologies are less significant and, because of the lack of accounting detail under the new separations procedures, are much more difficult to correct. *Id.*

[74] *See id.* at 7-8.

[75] *See* Oppostion of US West at 4; Opposition of USTA at 3-5; Opposition of NYNEX at 10; Opposition of SW Bell at 11, n. 17; Comments of NECA at 7. Pacific supports USTA's Opposition. *See* Opposition of Pacific at 3-4.

[76] *See* Opposition of Bell Atlantic at 3-4.

[77] *See* Opposition of GVNW at 4-5.

[78] NECA also states that we should use our monitoring program to determine the cumulative effects of the revenue requirement shifts. *See* Comments of NECA at 8.

[79] *See* Opposition of Texas Cooperative at 7-9.

[80] *See* Comments of NECA at 7-8, n.19.

[81] *See* Opposition of NYNEX at 11.

[82] *See also id.* at 13, n. 19.

[83] *See id.* at 13, n. 19, and 15-17, n. 25.

[84] *See* Reply of AT&T at 2-3.

[85] 52 Fed. Reg. 37,312 (1987) (to be codified at 47 C.F.R. §69.306(e)) (effective January 1, 1988).

[86] *Id.*, (to be codified at 47 C.F.R. §69.305) (effective January 1, 1988).

[87] *See* Petition of SW Bell at 6-9.

[88] Although SW Bell requests clarification of the rules, it also proposes that Section 69.306(e) be amended.

[89] *See* Opposition of Western Union at 4, n. 1.

[90] *See* Reply of SW Bell at 3 and Appendix 1.

[91] *See id.* at 3-4.

[92] *See id.* at 5, nn. 6 and 7.

[93] Western Union's assertion that some other interpretation would be in accord with a literal interpretation of the rule is not persuasive. The rule requires an apportionment that is consistent with the apportionment of the "associated" C&WF.

[94] 2 FCC Rcd at 2679.

[95] 2 FCC Rcd at 6452.

[96] *See* 47 C.F.R. §36.321.

[97] Western Union states that one Bell Operating Company had estimated that the effect of this change is to increase the special access revenue requirement by approximately 5 percent. *See* Petition of Western Union filed September 23, 1987, at 4, n. 1.

[98] *See Report and Order*, 2 FCC Rcd at 6452.

[99] *See* Opposition of NYNEX at 21.

[100] *See* Reply of SNET at 6.

[101] *See* Opposition of SW Bell at 6-7.

[102] *See id.* at 7.

[103] *See* Reply of Western Union at 7, n. 1.

[104] *See* MTS and WATS Market Structure, Amendment of Part 69 of the Commission's Rules for Recovery of Equal Access Cost, CC Docket No. 78- 72, 2 FCC Rcd 254 (1987).

[105] 2 FCC Rcd at 2679.

[106] 2 FCC Rcd at 6460.

[107] Other investment includes the investment in Account 2682, Leasehold Improvements; Account 2690, Intangibles; Account 1220, Material and Supplies; and Account 1402, Rural Telephone Bank Stock. *See* Access Charge Rules, 52 Fed. Reg. 37,308, 37,313 (1987) (to be codified at 47 C.F.R. §69.309)(effective January 1, 1988).

[108] 2 FCC Rcd at 6460.

[109] *See* Petition of SW Bell at 2-3; Petition of USTA at 6.

[110] US West and NECA support SW Bell's proposal. *See* Opposition of US West at 7; Comments of NECA at 8-9.

[111] 47 C.F.R. §36.171.

[112] Access Charge Rules, 52 Fed. Reg. 37308, 37,312, (1987) (to be codified at 47 C.F.R. §69.302(b)) (effective January 1, 1988). This means that the plant must be assigned to the plant categories that are used to apportion plant in service.

[113] 2 FCC Rcd at 6460.

[114] *See* Petition of USTA at 2-3; Petition of Pacific at 6. NECA supports USTA's proposal. *See* Comments of NECA at 10.

[115] *See* Reply of USTA at 2-3 and n. 4.

[116] *See* Opposition of AT&T at 3-4; Comments of MCI at 8-9.

[117] 2 FCC Rcd at 2676.

[118] 2 FCC Rcd at 6461.

[119] American Telephone and Telegraph Company Charges for Interstate Telephone Service, Docket No. 19129, 64 FCC 2d 1, (*Docket 19129 Report and Order)* (1977), *recon.*, 67 FCC 2d 1429 (1978).

[120] Amendment of Part 65 of the Commission's Rules to Prescribe Components of the Rate Bases and Net Incomes of Dominant Carriers, CC Docket No. 86-497, 2 FCC Rcd 332 (1987), *petitions for recon. filed*, February 18, 1988.

[121] *See* Petition of GTOC at 3.

[122] *See* Petition of SW Bell at 5, nn. 6 and 7.

[123] *See* Opposition of Western Union at 7.

[124] *See* Comments of MCI at 10.

[125] *See* Comments of Ad Hoc at 17.

[126] 3 FCC Rcd at 273.

[127] *Docket 19129 Report and Order*, 64 FCC 2d at 58-59.

[128] 3 FCC Rcd at 273.

[129] We stated that because the Part 69 Rule Making was re-examining the apportionment of taxes, we would not take any further action on the then pending Rule Making petition on the taxes issue. *See* Modification of Section 69.402 of the Commission's Rules, RM No. 5527, Mimeo No. 6773, released September 5, 1986.

[130] 2 FCC Rcd at 6460. *See also* Access Charge Rules, 52 Fed. Reg. 37,308, 37,313 (1987) (to be codified at 47. C.F.R. §69.402)(effective January 1, 1988).

[131] *See* Petition of Ameritech at 5-6. *See also* 47 C.F.R. §36.412(c).

[132] *See* Petition of Ameritech at 7, n. 6; Reply of Ameritech at 2-3.

[133] *See* Opposition of U S West at 5, n. 13.

[134] 2 FCC Rcd at 6460.

[135] If it so desires, Ameritech may file another petition for Rule Making concerning the apportionment of gross receipts taxes which are not collected in lieu of income taxes.

[136] *Id.* at 6459.

[137] *See* Petition of Pacific at 5, n. 8.

[138] *See* Opposition of AT&T at 2; Comments of Ad Hoc at 18-19; Opposition of Western Union at 8-10.

[139] 2 FCC Rcd 6459.

[140] 5 U.S.C. §601.

[141] Because of the nature of local exchange and access service, this Commission has concluded that small telephone companies are dominant in their fields of operation and, therefore, are not small entities as defined by the Regulatory Flexibility Act. *See* MTS and WATS Market Structure, 93 FCC 2d 241, 338-39 (1983). Thus, this Commission is not required by the terms of the Regulatory Flexibility Act to apply the formal procedures set forth therein. We are nevetheless committed to reducing the regulatory burdens on small telephone companies whenever possible consistent with our other public interest responsibilities. Accordingly, we have chosen to utilize, on an informal basis, appropriate Regulatory Flexibility Act procedures to analyze the effect of proposed regulations on small telephone companies.

[142] 44 U.S.C. §501.

[143] These actions are taken pursuant to 47 U.S.C. §§ 154(i), 154(j), 201, 202, 202, 203, 205, 218, and 221(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-613

In the Matter of

Amendment of Section 73.202(b), RM-6483
Table of Allotments,
FM Broadcast Stations.
(Dickson, Tennessee and
Benton, Kentucky)

NOTICE OF PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE

Adopted: December 2, 1988; Released: January 25, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration a petition for rule making filed by American Communications, Inc. (petitioner), licensee of Station WQZQ(FM), Channel 273C2, Dickson, Tennessee, proposing the substitution of Channel 273C1 for Channel 273C2 at Dickson and modification of its license accordingly. In order to permit the substitution of Channel 273C1 at Dickson, petitioner suggested that Channel 256A be substituted for Channel 272A at Benton, Kentucky, and the license of Station WCBL-FM be modified to specify operation on the new Class A channel.

2. A staff engineering analysis reveals that Channel 273C1 can be allotted to Dickson in compliance with the Commission's minimum distance separation requirements with a site restriction, if the channel substitution is accomplished at Benton. Petitioner specified a site 14.4 kilometers (9.0 miles) north of the city, which will avoid a short spacing to Station WYCQ(FM), Channel 275C1 at Shelbyville, Tennessee.[1]

3. As requested, we shall propose to modify the license of Station WQZQ(FM) to specify operation on Channel 273C1. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest nor require that the petitioner demonstrate the availability of an additional equivalent channel at Dickson.

4. We are issuing a *Show Cause Order* to Purchase Broadcasting Co., licensee of Station WCBL-FM at Benton, Kentucky, seeking comments as to why its license should not be modified to specify operation on Channel 256A in lieu of Channel 272A. Commission policy requires that Station WCBL-FM be reimbursed for the reasonable costs of changing its frequency. Petitioner has stated its willingness to reimburse Station WCBL-FM.

5. In view of the fact that Dickson, Tennessee, could receive expanded FM service the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following communities:

City	Channel No. Present	Proposed
Benton, Kentucky	272A	256A
Dickson, Tennessee	229A, 273C2	229A, 273C1

6. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Purchase Broadcasting Co., licensee of Station WCBL-FM, Channel 272A, Benton, Kentucky, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 256A in lieu of Channel 272A.

7. Pursuant to Section 1.87 of the Commission's Rules, Purchase Broadcasting Co., may, not later than **March 20, 1989,** file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Purchase Broadcasting Co., to furnish additional information. If Purchase Broadcasting Co., raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Purchase Broadcasting Co., will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

8. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

Purchase Broadcasting, Co.
P. O. Box 387
Benton, Kentucky 42025

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **March 20, 1989,** and reply comments on or before **April 4, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

John L. Tierney, Esquire
Ann Bavender, Esquire
Tierney & Swift
1200 18th Street, N.W.
Suite 210
Washington, D. C. 20036
(Counsels for petitioner)

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules. IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The restricted site coordinates are 36-12-30 and 87-23-20.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-603

In the Matter of

Amendment of Section 73.202(b), RM-6455
Table of Allotments,
FM Broadcast Stations.
(Hot Springs Village, Arkansas)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 2, 1988; Released: January 25, 1989

By the Deputy Chief, Policy and Rules Division:

1. A petition for rule making has been filed on behalf of Caddo Broadcasting Co. (petitioner) proposing the allotment of FM Channel 225A to Hot Springs Village, Arkansas, as that community's first local broadcast service. Petitioner stated its intention to apply for the channel if allotted.

2. A staff engineering analysis has determined that Channel 225A can be allotted to Hot Springs Village, Arkansas, in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules.[1]

3. In view of the fact that Hot Springs Village could receive a first local broadcast service, the Commission believes it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to that community, as follows:

	Channel No.	
City	Present	Proposed
Hot Springs Village, Arkansas	--	225A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 20, 1989,** and reply comments on or before **April 4, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows:

Tom Nichols
General Partner
Caddo Broadcasting Co.
P.O. Box S
Glenwood, AR 71943

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits

or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Coordinates utilized for this determination are those of the city reference point at 34-40-19 and 92-59-55.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-602

In the Matter of

Amendment of Section 73.202(b),	RM-6502
Table of Allotments,	
FM Broadcast Stations.	
(Buena Vista, Colorado)	

NOTICE OF PROPOSED RULE MAKING

Adopted: December 2, 1988; Released: January 25, 1989

By the Deputy Chief, Policy and Rules Division:

1. A petition for rule making has been filed by Robert D. and Marjorie M. Zellmer (petitioner) seeking the allotment of FM Channel 281A to Buena Vista, Colorado, as that community's first local FM broadcast service. Petitioner stated an intention to apply for the channel if allotted.

2. A staff engineering analysis has determined that Channel 281A can be allotted to Buena Vista, Colorado, in conformity with the miminum distance separation requirements of Section 73.207(b) of the Commission's Rules.[1]

3. In view of the fact that Buena Vista could receive a first local FM broadcast service, the Commission believes it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to that community, as follows:

	Channel No.	
City	Present	Proposed
Buena Vista, Colorado	--	281A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 20, 1989,** and reply comments on or before **April 4, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, as follows:

Robert D. & Marjorie M. Zellmer
Box 2224
Greeley, CO 80632

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Coordinates utilized for this determination are those of the city reference point at 38-50-30 and 106-07-54.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-601

In the Matter of

Amendment of Section 73.202(b), RM-6505
Table of Allotments,
FM Broadcast Stations.
(Johannesburg, California)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 2, 1988; Released: January 25, 1989

By the Deputy Chief, Policy and Rules Division:

1. Robert Adelman (petitioner) permittee of Station KRAJ(FM), Channel 280A, Johannesburg, California, has filed a petition for rule making seeking the substitution of Channel 280B1 for Channel 280A and modification of his permit accordingly, to provide that community with its first expanded coverage FM service. Petitioner advises that if his proposal is adopted, he will promptly effectuate the proposed channel change.

2. We believe the petitioner's proposal warrants consideration since it could provide the first wide coverage area FM service to the community. A staff engineering analysis has determined that the proposed allotment of Channel 280B1 can be achieved in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, utilizing the petitioner's preferred site located 11.1 kilometers (6.9 miles) northwest[1] of the community.

3. In view of the above, we shall propose to modify the Class A permit of Station KRAJ(FM), as requested, in the event Channel 280B1 is substituted for Channel 280A at Johannesburg. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we will not accept other expressions of interest in the proposed use of Channel 280B1 at Johannesburg.

4. Accordingly, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with regard to Johannesburg, California, as follows:

	Channel No.	
City	Present	Proposed
Johannesburg, California	280A	280B1

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **March 20, 1989,** and reply comments on or before **April 4, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

David M. Hunsaker, Esq.
Putbrese & Hunsaker
6800 Fleetwood Road
P.O. Box 539
McLean, VA 22101

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Reference coordinates at the petitioner's specified site are 35-27-04 and 117-42-41.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-600

In the Matter of

Amendment of Section 73.202(b), RM-6468
Table of Allotments,
FM Broadcast Stations.
(Colorado City, Arizona)

NOTICE OF PROPOSED RULE MAKING

Adopted: November 30, 1988; Released: January 25, 1989

By the Deputy Chief, Policy and Rules Division:

1. A petition for rule making has been filed by Diana L. Le Baron (petitioner) proposing the allotment of Channel 296C1 to Colorado City, Arizona, as that community's first local broadcast service. Petitioner stated her intention to apply for the channel if allotted.

2. A staff engineering analysis has determined that Channel 296C1 can be allotted to Colorado City, Arizona, in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules.[1]

3. In view of the fact that Colorado City, Arizona, could receive its first local broadcast service, the Commission believes it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to that community, as follows:

	Channel No.	
City	Present	Proposed
Colorado City, Arizona	--	296C1

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 20, 1989,** and reply comments on or before **April 4, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows:

Diana L. Le Baron
781 N. Valley View Dr., #34
St. George, UT 84770

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Reference coordinates used in this determination are the city reference point at 36-59-24 and 112-58-36.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-599

In the Matter of

Amendment of Section 73.202(b),	RM-6501
Table of Allotments,	
FM Broadcast Stations.	
(Salem, Indiana)	

NOTICE OF PROPOSED RULE MAKING

Adopted: December 2, 1988; Released: January 25, 1989

By the Deputy Chief, Policy and Rules Division:

1. A petition for rule making has been filed on behalf of Gary Albarez (petitioner) proposing the allotment of Channel 250A to Salem, Indiana, as that community's second local FM broadcast service. Petitioner states that if his proposal is granted, he, or a corporation to be formed, will apply for the channel.

2. A staff engineering analysis has determined that Channel 250A can be allotted to Salem, Indiana, in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, provided the transmitter is located at least 6.3 kilometers (3.9 miles) northwest[1] of the community to avoid short-spacing to Station WAMZ(FM), Channel 248C1, Louisville, Kentucky.[2]

3. In view of the fact that Salem could receive a second local FM service, the Commission believes it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to that community, as follows:

	Channel No.	
City	Present	Proposed
Salem, Indiana	255B	250A,255B

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 20, 1989,** and reply comments on or before **April 4, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Daniel F. Van Horn, Esq.
Arent, Fox, Kintner, Plotkin
& Kahn
1050 Connecticut Ave., NW
Washington, D.C. 20036-5339

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits

or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Reference coordinates at the restricted site are 38-38-13 and 86-09-47.

[2] Reference coordinates at the licensed site of Station WAMZ(FM) are 38-03-49 and 85-43-52.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: January 25, 1989

AMENDMENT OF THE 1974 SAFETY OF LIFE AT SEA CONVENTION

The Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 on the Global Maritime Distress and Safety System (GMDSS Conference) was held at the Headquarters of the International Maritime Organization in London from 31 October to 11 November 1988. The purpose of the Conference was to consider and adopt amendments to the 1974 SOLAS Convention to introduce the GMDSS. The SOLAS Convention applies to cargo ships of 300 tons and above, and to ships carrying more than 12 passengers which are engaged on international voyages.

The amendments adopted by the GMDSS Conference are deemed to have been accepted by 1 February 1990, unless one third of the Contracting Governments, or Contracting Governments the combined merchant fleets of which constitute not less than fifty percent of the gross tonnage of the World's merchant fleet object. The amendments essentially replace the existing manual Morse code ship-to-ship radiotelegraphy system with a fully automatic ship-to-shore distress alerting system using terrestrial and satellite data communication systems. The time required to bring assistance to vessels in distress using the GMDSS will be significantly reduced when compared to the existing system.

The GMDSS will significantly improve the safety of life and property at sea the world over through incorporation of advanced communication technology. Provisions have been made for rapid alerting and identification of ships. The GMDSS requires the carriage of two separate and independent radiocommunication systems for alerting designated authorities to a distress situation.

The SOLAS amendments adopted in London provide flexibility in choice of means for maintaining shipboard equipment carried for safety and distress purposes, a choice between on-board maintenance, shore-based maintenance, duplication of equipment necessary to ensure availability of communications or a combination of these means as determined by Administrations.

The amendments to the 1974 SOLAS Convention adopted by the 66 Contracting Governments attending the GMDSS Conference were fully consistent with objectives developed in the U.S. preparatory process. The Commission staff and U.S. Coast Guard, in conjunction with the interested government agencies, maritime labor and maritime management representatives participated in the development of the GMDSS over a ten year period. Consequential changes will need to be made to the Communications Act of 1934, as amended, to accommodate the GMDSS and to amend the existing provisions which require ships to carry radiotelephone and Morse radiotelegraphy systems for safety purposes.

Significant dates concerning the GMDSS are as follows:

SOLAS Amendments in force	1 February 1992
Satellite emergency position indication radiobeacons and NAVTEX equipment for ships to receive broadcasts of maritime safety information	1 August 1993
GMDSS equipment required on new ships	1 February 1995
GMDSS equipment required on all subject ships (final implementation)	1 February 1999

For Further information concerning this matter contact the Private Radio Bureau, Robert C. McIntyre (202)-632-7197.

Before the
Federal Communications Commission
Washington, D.C. 20554

Report No. DS-819

PUBLIC NOTICE

Released: January 25, 1989

HOME BOX OFFICE INC. files a petition for reconsideration of Commission's Order denying GE American Communications, Inc.'s modification request for its K-3 satellite.

On December 30, 1988, Home Box Office, Inc. (HBO) filed a petition for reconsideration of this Commission's Order in the matter, GE American Communications, Inc., 3 FCC Rcd 6871 (GE American Order). GE American Communications, Inc. (GE Americom) and HBO formed Crimson Satellite Associates (CSA) to provide various video programming services to its subscribers including direct-to home users. GE Americom proposed to operate its 12/14 GHz K-3 satellite from the 85' W.L. geostationary orbital location with 60 watt traveling wave tube amplifiers, half CONUS (contiguous U.S.), concentrated transmission beams and transponders capable of operating with 27 MHz or 54 MHz of usable bandwidths. It also proposed to co-locate a modified K-4 satellite at 85' W.L. at a future date. In response to considerable opposition and comment from the satellite industry regarding this proposal, the Commission released the GE Americom Order which resolved the dispute by creating a bifurcated high power density arc - an eastern segment at 75' W.L.-79' W.L. and western segment between 132' W.L.-136' W.L. Because GE Americom asserted that it would not operate its proposed high power density satellite outside of the 85' W.L.-106' W.L. orbital arc, the Commission denied its modification request to operate its high power density satellite at 85' W.L. HBO now petitions the Commission to reconsider its decision in the GE Americom Order asserting that the K-3/K-4 satellite combination at 85' W.L. would not cause unacceptable levels of interference to adjacent and neighboring satellites according to GE Americom's technical analysis.

Parties wishing to file oppositions or comments to HBO's petition should do so at the Commission no later than **February 21, 1989.** Reply comments should be filed no later than **March 7, 1989.**

Parties are requested to serve copies of the comments upon International Transcription Services, Inc. at their offices in Room 246, 1919 M Street, N.W., Washington, D.C. 20554, and upon Cecily Holiday, Chief, Satellite Radio Branch, Room 6324, 2025 M Street, N.W. Washington, D.C. 20554.

Copies of the petition and related documents may be obtained from International Transcription Services, Inc., 2100 M Street, N.W., Washington, D.C. 20036, (202) 857-3800. The documents are also available for public inspection and copying in Room 6218, 2025 M Street, N.W. Washington, D.C. 20554.

For further information, contact Wilbert E. Nixon at (202) 634-1624.

FEDERAL COMMUNICATIONS COMMISSION

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

Report No. DS-820

PUBLIC NOTICE

Released: January 25, 1989

MOBILE SATELLITE SERVICE MAJOR AMENDMENT FILED

On January 13, 1989, the American Mobile Satellite Consortium, Inc. (AMSC) filed a major amendment to the Joint Amendment (*see* Public Notice, Report No. DS-746, May 25, 1988) of the pending Mobile Satellite Service (MSS) applications in General Docket No. 84-1234. This major amendment has been, upon initial review, accepted for filing and appears to be complete. The Commission reserves the right to return this major amendment, if upon further examination, it is determined that it is defective or not in substantial compliance with the Commission's rules, regulations or policies.

AMSC is modifying the Joint Amendment to request assignment of orbital locations for three satellites and frequencies for feeder link operations as follows:

(1) Location: 101' W.L.

Frequencies: 10.70 to 10.95 and 13.00 to 13.15 GHz (one polarization)

(2) Location: 62' W.L.

Frequencies: 11.7 to 11.8 GHz and 14.0 to 14.1 GHz (two polarizations)

(3) Location: 137' W.L.

Frequencies: 11.7 to 11.8 GHz and 14.0 to 14.1 GHz (two polarizations)

In addition, AMSC requests a waiver of Footnote NG104 in the Table of Frequency Allocations, *see* 47 C.F.R. § 2.106, in conjunction with its request to use the 11/13 GHz bands for the satellite it proposes to locate at 101' W.L. AMSC also requests a waiver of the Commission's decision in *Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service*, FCC 88-393 (December 7, 1988), in conjunction with its request to use the 12/14 GHz bands at 62' W.L. and 137' W.L.

Interested parties may file comments on this major amendment on or before **February 27, 1989.** Reply comments will be due by **March 10, 1989,** and responses will be due by **March 17, 1989.** Copies of the amendment, as well as other documents filed in this proceeding, are available in the Domestic Facilities Division Public Reference Room, Room 6220, 2025 M Street, N.W. (Telephone: 202-634-1512).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

BELLSOUTH OPERATING COMPANIES — Transmittal No. 185

Revisions to Tariff F.C.C. No. 1

Billing of Jointly Provided Feature Group A Access Service

ORDER

Adopted: January 12, 1989; Released: January 13, 1989

By the Chief, Common Carrier Bureau:

1. On September 16, 1988, the Bell South Operating Companies (BellSouth) filed the above-captioned proposed revisions to modify BellSouth Tariff F.C.C. No. 1 as it pertains to the billing of customers for certain jointly provided Feature Group A (FGA) access service. On October 3, 1988, MCI Telecommunications Corporation (MCI) filed a petition to suspend the proposed tariff revisions (MCI Petition). BellSouth filed its reply on October 14, 1988 (BellSouth Reply). The proposed revisions are currently scheduled to become effective on January 15, 1989.[1]

2. Under BellSouth's current tariff, if FGA access service is jointly provided with another local exchange carrier (LEC), the carrier in whose territory the first point of switching is located accepts the order, arranges the service, and bills the customer in accordance with its own tariff. The currently proposed revisions would add an exception to this meet point billing rule. Specifically, when BellSouth and one or more other LECs jointly provide the transport facility between the first point of switching and the customer's point of termination, these revisions would enable each of the LECs involved to use its own tariff to bill the customer for each LEC's portion of such facility. Such separate billing will occur if each affected LEC agrees to that arrangement.

3. In its petition, MCI first claims such meet point billing is not a viable option for FGA access service because of certain characteristics of such service within each local access and transport area. MCI Petition at 2 n.6. Second, MCI argues that continuing Bureau and industry investigation of meet point billing for both FGA and Feature Group B makes it inappropriate for BellSouth to adopt these revisions at this time. *Id.* at 2-3. Finally, MCI submits that BellSouth's adoption of these revisions would be inconsistent with the meet point billing implementation cycle previously negotiated by BellSouth and others. *Id.* Accordingly, MCI asks the Bureau to suspend the tariff until these investigations are completed. *Id.* at 3.

4. BellSouth replies first by asserting that the pendency of these investigations is not a sufficient reason to suspend these proposed revisions and that suspension is only appropriate if there are significant questions as to the lawfulness of the transmittal. Since MCI has not challenged the lawfulness of these tariff revisions, BellSouth argues, the transmittal should be permitted to become effective as scheduled. Bell South Reply at 1-2. BellSouth also states that if further changes to its tariff become necessary as a result of subsequent Commission action, the tariff can be revised at that time. *Id.* at 3.

5. The Common Carrier Bureau has reviewed the tariff transmittal as recently modified, as well as the pleadings filed by MCI and BellSouth, and concludes that no compelling argument has been presented that an investigation of the proposed revisions is warranted at this time.

6. IT IS THEREFORE ORDERED that the petition against BellSouth Operating Companies Tariff F.C.C. No. 1, Transmittal No. 185, filed by MCI Telecommunications Corporation IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTE

[1] BellSouth filed Application No. 75 to modify its revisions on December 9, 1988, and amended that application on December 13, 1988. BellSouth was granted permission to make these modifications to the proposed revisions on December 15, 1988, pursuant to Special Permission No. 88-608.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: January 13, 1989

Ordering and Billing Forum of the

Exchange Carriers Standards Association, Inc.

Files Report on Meet Point Billing

PLEADING CYCLE ESTABLISHED

In an Order[1] released July 31, 1987, the Federal Communications Commission directed the Ordering and Billing Forum (OBF) of the Liaison Committee Exchange Carriers Standards Association, Inc. to investigate the feasibility of extending Meet Point Billing concepts to Feature Group A (FGA) and Feature Group B (FGB). The OBF established the FGA and FGB Work Group to pursue identification, analysis and resolution of issues and options. On December 8, 1988 OBF filed with the Commission its report on Feature Group A and B Meet Point Billing.

Parties wishing to file comments on the above-referenced matter should do so no later than **February 13, 1989.** Reply comments should be filed no later than **February 28, 1989.** Parties are requested to furnish copies of their comments and/or reply comments to International Transcription Service, Inc. (ITS), at their office in Room 246, 1919 M Street, N.W., Washington, D.C. 20554, and to the Chief, Tariff Division, Room 518, 1919 M Street, N.W., Washington, D. C. 20554

Copies of comments and related documents in this proceeding may be obtained from ITS, 2100 M Street, N.W., Washington, D.C. 20036, (202) 857-3800. The documents are also available for public inspection and copying in Room 518, 1919 M Street, N. W., Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION

FOOTNOTE

[1] Waiver of Access Billing Requirements and Investigation of Permanent Modifications, Memorandum Opinion and Order, CC Docket No. 86-104, 2 FCC Rec 3679 (1987).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, NORTHWESTERN BELL TELEPHONE COMPANY, AND PACIFIC NORTHWEST BELL TELEPHONE COMPANY — Transmittal No. 194

Revisions to Tariff F.C.C No. 1

Petition for Waiver of Section 65.702(c) of the Commission's Rules

ORDER

Adopted: January 13, 1989; Released: January 13, 1989

By the Chief, Common Carrier Bureau:

1. On September 27, 1988, Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (US West) filed Transmittal 194, proposing revisions to its special access provisions in Tariff F.C.C. No. 1. In addition, US West filed an associated petition for waiver of certain Commission requirements, in order to facilitate the revisions it proposes in Transmittal 194. The revisions are now scheduled to become effective on January 15, 1989.

2. Under the proposed revisions, US West's special access rates, which are currently aggregated at the level of each of its three operating companies, would henceforth be aggregated at the level of the entire regional company. This would result in unified, averaged rates for special access throughout US West's regional service territory. Description and Justification (D&J) at 1-1. In addition, US West seeks to utilize an updated unit cost study in establishing the internal relationship among rate elements in the proposed unified tariff, to reflect what it describes as significant changes in provisioning and technology since its last filed unit cost study. *Id.*

3. US West states that the direction and magnitude of the changes in various rate elements resulting from the proposed regional unification and the updated cost study will vary from operating company to operating company, but that the overall, region-wide effect will be "revenue neutral." In order to cushion anticipated rate shock for the various customer groups who will experience increases, US West proposes to phase in the revised rates in four approximately equal steps over a two year period, beginning on the effective date of the revisions. *Id.* 1-6 to 1-10.

4. US West asserts that its rate unification proposal will achieve rate consistency, rate stability, and administrative efficiency. Moreover, US West notes that the Commission recently permitted it to effect two similar sets of revisions through previous transmittals. *Id.* at 1-1 to 1-5. In the first of these, US West unified both switched and special access rates at the operating company level;[1] in the second, it further unified switched access alone at the regional level.[2]

5. US West's Transmittal 194 also proposes to complete the process begun in the Annual 1988 Access Tariff Filings of moving its special access nonrecurring charges (NRCs) to full cost levels. D&J at 4-6.

6. US West's associated petition for waiver, filed September 27, 1988, addresses two different Commission requirements. First, it seeks waiver of Section 65.702(c) of the Commission's Rules, 47 C.F.R. § 65.702(c), which governs aggregation of study areas for monitoring rate of return.[3] Specifically, US West requests that the four step transition to regionally aggregated special access rates be deemed complete as of the effective date of the first step, for purposes of monitoring rate of return. US West argues that the logic of the transition plan requires this because the phased-in rates are ultimately targeted to recover its revenue requirement on an aggregated basis. Petition for Waiver at 2-5.

7. Second, US West's petition seeks continuation of a conditional waiver, originally granted in connection with the Annual 1988 Access Tariff Filings, of the Commission's prescribed ratio of two-wire to four-wire channel terminations for rate development purposes.[4] US West states that, pursuant to the original waiver, it has developed an alternative ratio based on its own cost studies and it now must phase in that ratio as part of the transition to regional rates. *Id.* at 5-6.

8. Tele-Communications Association (TCA)[5] filed a petition to reject or to suspend and investigate US West's proposed revisions, and MCI Telecommunications Corporation (MCI) filed a petition to suspend and investigate them. No party has filed any pleading addressed to US West's petition for waiver of Section 65.702(c) and the channel terminations ratio.

9. TCA maintains that US West's proposed unification would constitute a serious departure from cost-causative pricing, particularly in view of the wide geographical variation within US West's territory. TCA Petition at 2-4. TCA also claims that rate averaging would unreasonably discriminate against those customers in low cost areas whose operations are not region-wide and who therefore could not benefit from the overall revenue neutrality which US West claims will result from its unification plan. *Id.* at 5-6. TCA further argues that the unification already accomplished through previous transmittals is sufficient to achieve the goals of rate consistency, rate stability, and administrative efficiency and that if the Commission does allow unification, the phase-in period should be five years rather than two. *Id.* at 6-7 and n.16.

10. MCI states that it does not oppose US West's proposals for region-wide unification or full cost NRCs *per se*, but seeks correction of certain errors and inconsistencies in US West's tariff development. First, MCI claims that US West's reported earnings for the first six months of 1988 exceed its allowable rate of return but that US West has not revised the faulty demand and revenue requirement projections which underlie those excess earnings, before using those projections in the instant filing. MCI Petition at 3-4. Second, MCI claims that the full cost NRCs which US West proposes to recover through its revised tariff are based on excessive labor wage rates and task time estimates for installation of special access facilities, compared with the wage rates and time

estimates it used in the Annual 1988 Access Tariff Filing. *Id.* at 2-3. Finally, MCI maintains that US West's demand response analysis is inadequate in several respects. *Id.* at 4-11.

11. US West replies to TCA that its unification proposal is clearly cost based since, as part of a revenue neutral revision, the proposed rates will recover no more than the cost of service as determined in previous proceedings. Further, US West maintains that cost differentials do not necessarily follow state lines or operating company lines and that region-wide aggregation is as reasonable as any other basis of aggregation. US West Opposition at 3-4. Moreover, US West argues that the Commission has sanctioned aggregation of this magnitude or larger in several other contexts, including the Docket 84-800 rate of return proceeding and US West's own recent proposal to unify its switched access rates. *Id.* at 6. US West also challenges TCA's discrimination argument, noting that the unified rates will be charged alike to all interexchange carriers and end users throughout the region. *Id.* at 6-7. Finally, US West responds that a five year phase-in constitutes a reasonable period, and that three other regional holding companies have been allowed to unify their special access rates on an immediate basis. *Id.* 8-10.[6]

12. In reply to MCI's assertion that US West based the instant filing on flawed projections that have already resulted in excessive returns for the first half of 1988, US West points to several instances in which it claims that MCI has either used incorrect data or invalid methodologies. *Id.* at 16-19. US West responds at length to MCI's contention that US West used excessive labor rates and task time periods to determine NRCs, generally arguing that either the various increases in these factors are normal or that there were legitimate reasons for larger than normal increases. *Id.* at 10-16.

13. Finally, US West responds to each of MCI's arguments against its demand response analysis. *Id.* at 19-25. US West contends that it has not double-counted demand response from the Annual 1988 Access Tariff Filings because it used the same baseline for the present filing as it did for the annual 1988 filing. *Id.* at 19-23. Next, US West argues that it would be computationally cumbersome to recognize the increased probability of intra-regional channel terminations in its demand response analysis, and that the effect from this increased probability would largely be offset by other factors. *Id.* at 23-24. Finally, US West states that it did not include demand response for services other than voice grade special access in its proposed rates because it does not currently maintain elasticity estimates for such services. *Id.* at 24-45.

14. The Common Carrier Bureau has reviewed US West's tariff filing, the petitions, and US West's reply. We find that no compelling argument has been presented that the proposed tariff is patently unlawful so as to require rejection and that an investigation of the tariff is not warranted at this time.

15. We have also reviewed US West's petition for waiver of Section 65.702(c) and for continued waiver of the prescribed channel termination ratio, and conclude that they should be granted. We recently granted US West's request for waiver of Section 65.702(c) with respect to its proposal for region-wide aggregation of its switched access rates, and we find that such a waiver is equally appropriate here.[7] For similar reasons, we also find that US West's request for waiver of the channal termination ratio is appropriate.

16. Accordingly, IT IS ORDERED that the petitions to reject or to suspend and investigate filed by Tele-Communications Association and by MCI Telecommunications Corporation against Transmittal No. 194 of Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company ARE DENIED.

17. IT IS FURTHER ORDERED that the petition for waiver of Section 65.702(c) of the Commission's Rules, 47 C.F.R. § 65.702(c), and for waiver of the prescribed two-wire to four-wire ratio for channel terminations as described herein, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] *See* Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company, Order, Mimeo No. 5037 released Sept. 30, 1987.

[2] *See* US West Transmittal No. 165, filed June 3, 1988, which became effective without opposition on July 18, 1988.

[3] Section 65.702(c) provides that if the carrier has not used the same level of study area aggregation during the entire two-year earnings review period, then the carrier's earnings must be measured for the two-year period on the basis of the tariffs in effect at the end of the second year of the review period. It further provides that if tariffs representing a higher level of aggregation were not in effect for at least eight months in the second year, then the carrier's earnings must be measured on the basis of the level of aggregation in effect the majority of the two-year period.

[4] *See* Annual 1988 Access Tariff Filings, Petitions for Waiver, Memorandum Opinion and Order, 2 FCC Rcd 5659, 5661 (1987).

[5] TCA is an association of telecommunications managers for a variety of institutions.

[6] US West cites various transmittals of Bell Atlantic, BellSouth, and Southwestern Bell.

[7] *See* Moutain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company, Petition for Waiver of Section 65.702(c), 3 FCC Rcd 5043 (1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T COMMUNICATIONS Transmittal No. 1386

Revisions to Tariff F.C.C. No. 1

ORDER

Adopted: January 13, 1989; Released: January 17, 1989

By the Chief, Common Carrier Bureau:

1. The above-captioned tariff revisions were filed by AT&T Communications (AT&T) on October 20, 1988 and are scheduled to take effect on January 18, 1989. These revisions reduce rates for Hospitality Network Service (HNS)[1] from 18 cents per minute to 16.5 cents per minute. AT&T states that in the months since HNS became effective, AT&T has realized that its current HNS rates are not competitive with rates offered by AT&T's competitors. AT&T claims that this reduction will enable AT&T to increase demand by attracting new customers and retaining customers who would otherwise cease using HNS at the end of their current terms. AT&T Description and Justification (D&J) at 2. AT&T argues that total revenues for the switched services category will be $13.9 million higher and net earnings $1.6 million higher in 1989 than if the rates are not reduced. AT&T states that this filing complies with the *MTS Guidelines Order* [2] because net revenues for the switched services category will increase on a present value basis by $500 thousand for the 12 month period after the effective date, and by $16.1 million within 36 months after the effective date. *Id.* at 3-4.

2. Telesphere International, Inc. (Telesphere) filed a petition to reject or, in the alternative, to suspend and investigate and MCI Telecommunications Corporation (MCI) filed a petition to suspend and investigate. Telesphere argues that the proposal does not meet the net revenue test. It challenges AT&T's demand projections, arguing that although AT&T appears to predict the new offering will be used by only one retained customer and one new customer, AT&T projects a ten-fold increase in its HNS volume. Both Telesphere and MCI contrast AT&T's current projections with those made when HNS was first initiated six months ago, and conclude that neither set of projections is reliable. MCI Petition at 3; Telesphere Petition at 1-2. Telesphere also alleges that the new HNS rate is close to AT&T's rate under the Holiday Rate Plan, which AT&T argued would not be profitable if offered more widely.

3. Telesphere also disputes AT&T's claim that there will be no cross-elastic effects, stating that the proposed rate will cause the current HNS customer to shift to the lower rate. Finally, Telesphere maintains that AT&T should not be allowed to implement this rate reduction while the FCC is investigating AT&T's practices with regard to hotel customers. [3] MCI argues that HNS is actually a single customer offering and should be investigated as such in conjunction with the Holiday Rate Plan investigation. MCI maintains that because neither AT&T's other rates nor its competitors' rates have been reduced since the original HNS offering, AT&T is reducing this rate only to avoid dismay by one customer, Marriott, at the rate AT&T has given to Holiday. MCI Petition at 5-7. MCI alleges that AT&T is needlessly reducing the contribution toward common costs made by the one HNS customer. *Id.* at 5 n.11. Finally, MCI contends that this price concession to Marriott will not solve the problem with Holiday, because Holiday's rate continues to be lower. *Id.* at 7 n.14.

4. AT&T filed a reply stating that by its terms, HNS is not limited to a single customer. Furthermore, AT&T maintains that its 1988 demand projections include usage from a customer other than Marriott. AT&T Reply at 2-3. AT&T defends its demand projections as based both on the same methodology as its earlier HNS filing, and on conservative estimates of additional demand and growth rates. *Id.* at 3, 4. AT&T reiterates that HNS remains fully profitable, and states that the rate here is higher than the Holiday Rate Plan rate. *Id.* at 4. AT&T explains that there are no cross-elastic impacts shown because the reduction in revenue from the repricing is already fully reflected in all of AT&T's HNS revenue projections. *Id.* at 5 n.*. Finally, AT&T maintains that HNS and the Holiday Rate Plan are not "like" services, so the Commission need not investigate them together to eliminate the possibility of discrimination. *Id.* at 5-6.

5. The Common Carrier Bureau has reviewed the tariff transmittal and the pleadings filed by the above-listed petitioners and AT&T. We find that no compelling argument has been presented that the tariff is patently unlawful so as to require rejection and that an investigation of the revisions is not warranted at this time.

6. IT IS THEREFORE ORDERED that the petitions to reject or suspend and investigate AT&T Communications Tariff F.C.C. No. 1, Transmittal No. 1386, filed by the above-listed petitioners ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] HNS is an offering under which customers who aggregate at least four million minutes per month of 1+ calling pay a fixed rate of 18 cents per minute for calls during all rate periods, provided that less than 50 percent of the calling occurs in the day rate period. HNS is offered for a fixed term of one year.

[2] Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans, CC Docket No. 84-1235, FCC 85-540, 50 Fed. Reg. 42945 (Oct. 23, 1985).

[3] *Id.* at 3-4, citing Telesphere International, Inc. v. AT&T, File No. E-88-75.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-581

In re Applications of

COMPASS ROSE COMMUNICATIONS CORP.	File No. BPCT-880610KG
SUN WORLD COMMUNICATIONS	File No. BPCT-880801LJ
CHANNEL 61 PARTNERS, LIMITED	File No. BPCT-880801LK
MARICOPA COMMUNITY TELEVISION PROJECT	File No. BPCT-880802KF
Gregory R. Brooks d/b/a BROOKS BROADCASTING	File No. BPCT-880802KI

For Construction Permit
Phoenix, Arizona

HEARING DESIGNATION ORDER

Adopted: November 30, 1988; Released: January 25, 1989

By the Chief, Video Services Division:

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 61, Phoenix, Arizona.

2. No determination has been reached that the tower height and location proposed by each applicant would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

3. The technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

4. Section IV, FCC Form 301, requires an applicant for a television station to submit, as an exhibit, a brief description, in narrative form, of its planned programming service relating to the issues of public concern facing the proposed service area. Maricopa Community Television Project has not submitted such an exhibit. Accordingly, the applicant must file the appropriate exhibit with the presiding Administrative Law Judge within 30 days after this Order is released.

5. Section II, Item 4 of FCC Form 301 requires parties to an application to furnish the names and residence (home) addresses of the principals. William Sauro owns all of the stock of Channel 61 Partners, Inc., the sole general partner of the applicant Channel 61 Partners, Limited[1], but the applicant has not provided Mr. Sauro's home address as required. Accordingly, the applicant will be required to submit an appropriate amendment to the presiding Administrative Law Judge within 30 days after the release of this Order.

6. William Sauro is President, Treasurer and Director and controls 85.38% of the voting shares of KUSK, Inc., licensee of KUSK(TV), Channel 7, Prescott, Arizona. There will be overlap of the predicted Grade B contours of the proposed station with commonly owned KUSK(TV). Section 73.3555(a)(3) of the Commission's Rules essentially provides that no license for a television broadcast station shall be granted to any party which directly or indirectly owns, operates, or controls one or more broadcast stations in the television service if the grant of such license will result in any overlap of the Grade B contours of the existing and proposed stations. Although the applicant says that it will rebroadcast some of the programming of commonly owned KUSK(TV), it does not specifically propose a satellite operation. Accordingly, we will specify a duopoly issue.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to each of the applicants, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine with respect to Channel 61 Partners Limited, whether William Sauro's interests in Station KUSK(TV), Prescott, Arizona, and the proposed television station, would be consistent with Section 73.3555(a)(3) of the Commission's Rules, and if not, whether circumstances exist which would warrant a waiver of Section 73.3555 of the Commission's Rules.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. IT IS FURTHER ORDERED, That Maricopa Community Television Project shall submit its response to Section IV, FCC Form 301, to the presiding Administrative Law Judge within 30 days after this Order is released.

10. IT IS FURTHER ORDERED, That Channel 61 Partners, Limited shall submit an amendment listing William Sauro's residence (home) address to the presiding Administrative Law Judge within 30 days after this Order is released.

11. IT IS FURTHER ORDERED, That the Petition for Leave to Amend filed by Channel 61 Partners, Limited IS GRANTED, and the amendment IS ACCEPTED for Section 1.65 purposes only.

12. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY RESPONDENT to this proceeding with respect to issue 1.

13. IT IS FURTHER ORDERED, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Each applicant shall attach to its notice of appearance a remittance of $6,000 as a hearing fee as required by Section 1.1104 of the Commission's Rules.

14. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart, Chief
Video Services Division
Mass Media Bureau

FOOTNOTE

[1] Originally, the applicant was KUSK, Inc., a corporation controlled by William Sauro. On October 31, 1988, the application was amended to reflect a restructuring of the applicant to a limited partnership, the sole general partner of which is a corporation wholly owned and controlled by William Sauro. Since the amendment was filed after the "B" cut-off date, the applicant will not be permitted to claim any comparative advantage as a result of the amendment.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-584

In re Applications of

EDWIN A. BERNSTEIN (hereafter Bernstein)	File No. BPH-870330NC
BENJAMIN MACWAN (hereafter Macwan)	File No. BPH-870331MK
RADIO CENTER MORICHES, A GENERAL PARTNERSHIP (hereafter RCM)	File No. BPH-870331MV
ENRIQUE CARLOS GROSS (hereafter Gross)	File No. BPH-870331NB
NANETTE MARKUNAS (hereafter Markunas)	File No. BPH-870331NC
DAKK, INC. (hereafter Dakk)	File No. BPH-870331ND
CM BROADCASTING LIMITED PARTNERSHIP (hereafter CM)	File No. BPH-870331NT
CHARLES R. KENDALL, STEVEN LEEDS AND RICHARD SUMMER d/b/a SHINNECOCK BROADCASTING PARTNERSHIP (hereafter Shinnecock)	File No. BPH-870331NU
VERTICAL BROADCASTING, INC. (hereafter Vertical)	File No. BPH-870331OQ
MORICHES BAY BROADCASTING, INC. (hereafter MBBI)	File No. BPH-870331PI
KNIGHT COMMUNICATIONS, CORP. (hereafter Knight)	File No. BPH-870413KI
ROCKHIT COMMUNICATIONS USA (hereafter Rockhit)	File No. BPH-870414KI
GATEWAY BROADCASTING (hereafter Gateway)	File No. BPH-870415KR
FRIENDSHIP COMMUNICATIONS, LTD. (hereafter Friendship)	File No. BPH-870415KS
HAMPTON COMMUNICATIONS LIMITED PARTNERSHIP (Hampton)	File No. BPH-870415KY
LONG ISLAND UNIVERSITY RADIO, INC. (hereafter LIU)	File No. BPED-870415MC
THE LEFEBVRE GROUP (hereafter Lefebvre)	File No. BPH-870415MF
BAY MEDIA GROUP, INC. (hereafter Bay Media)	File No. BPH-870415ML

For a Construction Permit
For a New FM Station
on Channel 241A at
Center Moriches, New York

HEARING DESIGNATION ORDER

Adopted: December 13, 1988; Released: January 26, 1989

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned applications for a construction permit for a new FM station.

2. *Preliminary Matters.* Numerous parties have filed informal objections in this proceeding.[1] Although most of the pleadings are directed specifically against Rockhit, all speak in very general terms with objections applicable to all of the Center Moriches applicants. The objecting parties all assert that the Center Moriches allocation at Channel 241 will effectively block out reception of WQXR, New York City, New York, operating at first adjacent Channel 242, from Western Suffolk County, Long Island, New York. The parties claim this should be avoided since WQXR is one of only two classical music stations which may be heard from Suffolk County.

3. The arguments advanced in these objections are without merit. It is true that, WQXR, being an existing station, is entitled to some protection under the Commission's Rules. Section 73.207 of the Commission's Rules requires that all applicants for the Center Moriches Class A allocation give 105 kilometers of protection to WQXR, a Class B facility operating on a first adjacent channel. All of the Center Moriches applicants have proposed transmitter sites which fully honor the spacing entitled to WQXR. Therefore, operation of a new facility in Center Moriches will not result in interference to WQXR within WQXR's protected service contour. Despite the fact that those who reside outside of the protected contour of WQXR may receive interference, denying a grant of a construction permit to any of the Center Moriches applicants is not warranted. Specifically, the issue raised in these objections (*i.e.*, that reception of a station will be blocked) is not appropriate at this stage. The addition of Channel 241 to the Table of Allotments in 47 C.F.R. § 73.202 for Center Moriches was adopted in the *Report and Order* in MM Docket No. 84-231 on December 19, 1984, after full notice and comment Rule Making procedures. Interested parties were given an opportunity at that time to submit comments in favor of, or in opposition to, the allocation of said channel. The numerous objections raised herein would have been appropriate during the Rule Making comment period; as the issue of whether Channel 241 should be allocated to Center Moriches has already been decided, the objections are, in essence, untimely.

4. An additional concern of the objections is the loss of a classical music station. The Commission, however, does not take programming into account when making licensing decisions, but instead relies on market forces to promote diversity in entertainment programming and thus serve the public interest. This position has been upheld by the United States Supreme Court. *See FCC v. WNCN Listeners' Guild*, 450 U.S. 582 (1981). Finding that the objections offer no basis for the Commission to dismiss or deny the application of Rockhit or any other Center Moriches applicant, those objections will be denied herein.

5. *Directional Antenna*. Gross and Shinnecock state in Section V-B, Item 7, and in the associated engineering statement, that a directional antenna is *not* being proposed. However, a directional antenna pattern was submitted as Figure 1 in each application and the field strength contours depicted on the coverage map, Figure 6 of each application, were clearly plotted utilizing the directional antenna pattern. Accordingly, Gross and Shinnecock will be required to submit a clarifying amendment to correct this inconsistency. This amendment must either specify a directional operation or withdraw the radiation pattern and correct the coverage map accordingly.

6. *Height Above Average Terrain Computation*. Both Gross and Shinnecock omitted the 135, 180 and 225 degree radials from their calculation of the antenna height above average terrain (HAAT), Section V-B, Item 15. Section 73.313 of the Commission's Rules states, in part, "where the 3 to 16 kilometer portion of a radial extends in whole or in part over a large body of water . . . but the 50 uV/m contour encompasses land area within the United States beyond the 16 kilometer portion of the radial, *the entire* 3 to 16 kilometer portion of the radial must be included in the computation of the antenna HAAT." (Emphasis Added) 47 C.F.R. § 73.313(d)(2). Both applicants' 225 degree radial crosses U.S. land approximately 3.5 kilometers from the transmitter site and again crosses land approximately 5.5 kilometers from the transmitter site after briefly crossing water. In addition, the 50 uV/m contour encompasses land area on Long Island, New York. Thus, *the entire* 3 to 16 kilometer portion of the 225 degree radial must be included in both the Gross and Shinnecock HAAT computations. Section 73.313 goes on to state, "[h]owever, where the 50 uV/m contour does not so encompass United States land area and. . . where a part of the 3 to 16 kilometers portion extends over large bodies of water . . . only that part of the radial extending from the 3 kilometers sector to the outermost portion of land area within the United States covered by the radial must be used in the computation of the antenna HAAT." Therefore, because both Gross' and Shinnecock's 135 degree radial crosses Westhampton Beach, New York, 5.2 kilometers from the transmitter site and the 50 uV/m contour does not so encompass land, the 135 degree radial must be included from the 3 kilometers sector to the outermost portion of Westhampton Beach in both HAAT computations. Similarly, the 180 degree radial must be included from the 3 kilometers sector to the outermost portion of the beach it crosses approximately 5 kilometers from the transmitter site. However, engineering analysis reveals that the inclusion of the 135, 180 and 225 degree radial does not increase the proposed HAAT beyond that of the maximum permitted for a Class A station pursuant to 47 C.F.R. § 73.211. Thus, both Gross and Shinnecock are in technical compliance with the Commission's Rules. Accordingly, we conclude that the HAAT discrepancy does not warrant the return of these applications. We will request, however, the submission of an appropriate amendment from both applicants which corrects any deficiency in the HAAT computations.

7. *Markunas*. Although Markunas has outlined the boundaries of Center Moriches in Exhibit B of its application, thereby complying with the tenderabiliy requirements regarding city-grade coverage, it appears the boundaries outlined within Markunas' application are in error. Therefore, Markunas must submit a map which shows clearly, legibly and accurately, and with the original printed latitude and longitude markings, and a scale of distance in kilometers, the 3.16 mV/m predicted contour and the legal boundaries of the community or an appropriate issue will be specified.

8. *CM*. In response to Section II, Item 1, CM states it is a Limited Partnership. In Exhibit 2, CM states that the limited partnership agreement provides, among other things, that additional limited partners may be admitted. However, CM fails to provide the relevant details of the limited partnership agreement. In *Attribution of Ownership Interest*, 97 FCC 2d 997 (1984), *recon. granted in part*, 58 RR 2d 604 (1985) (*Attribution*), the Commission stated that the limited partnership interests were not attributable for the multiple ownership rules if the applicant certified that the limited partners will "not be involved in any material respect in the management of" the proposed station. *Attribution*, at 1023. In order for the limited partners to be exempt from attribution under the Commission's multiple ownership rules, 47 C.F.R. § 73.3555, the applicant must certify that, by the terms of the partnership agreement, its limited partners will refrain from involvement in any material respect in the management or operation of the proposed station and, further, that no

limited partner has any interest in or connection of any nature with any broadcast station or other medium of mass communication operating within the service area of the proposed station area that is or might be inconsistent with the Commission's cross-interest policy. The Commission defined the requisite degree of non-involvement in paragraphs 48-50 of the reconsideration. Further, the Commission directed that Form 301, among others, be amended to conform to the new attribution standards. *Attribution*, at 1024. Accordingly, there is no need for CM to provide information as to the limited partners if it can submit the necessary certification and show that limited partnership interests will be sold only to individuals or entities that are sufficiently insulated. If the certifications and showings are not appropriate, the necessary information as to each limited partner will have to be filed as an amendment. Finally, since the Commission retained the cross-interest policy as to other attributable media interests in the same area, CM will be required to state whether the limited partners have or could have other media interests subject to the cross-interest policy and identify the limited partners with any such interest, identify the other local media, and state the nature or extent of the ownership interest.

9. *Gateway*. Gateway has not submitted a description in narrative form of proposed programming relating to the issues of public concern facing its service area, pursuant to Section IV of FCC Form 301. Accordingly, Gateway will be required to file within 30 days of the release of this Order a narrative programming statement with the presiding Administrative Law Judge, or an appropriate issue will be specified by the Judge.

10. *LIU*. In Exhibit 1 to Section II of FCC Form 301, LIU states that it is a not-for-profit corporation affiliated with Long Island University, implying that it may desire to operate as an educational facility. LIU, however, filed its application on an FCC Form 301 and paid the $1,800.00 filing fee, implying that it may desire to operate as a commercial facility. Noncommercial Educational FM applicants may apply for channels in the non-reserved band; they must, however, still comply with the requirements for an educational applicant found on FCC Form 340. Since the majority of the relevant engineering data is called for on Form 301, a non-commercial educational applicant applying for a channel on the commercial band which applies on a Form 301, must only submit Sections II and IV of Form 340. LIU will be required to submit an amendment to the presiding Administrative Law Judge within 30 days of the release of this Order clarifying whether it is applying as a commercial applicant or as a non-commercial educational applicant. If LIU is applying to operate as an educator, it must also submit Sections II and IV of FCC Form 340. Also, as an educator, LIU may be entitled to a return of its filing fee as educators are exempted from filing fees. Accordingly, if LIU intends to operate as a non-commercial educational entity, it should submit the appropriate forms to the Commission's Fee Section for the return of its previously submitted filing fee.

11. Section II, Item 4 of FCC Form 301 (October 1986) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. LIU has not completed Item 4 correctly. LIU's application gives a post office box number as the residence address for director John Kanas. Accordingly, LIU must submit an amendment which gives all the information required by Section II, Item 4 to the presiding Administrative Law Judge after this Order is released.

12. *Lefebvre*. In response to Section II, Item 1, Lefebvre states it is a limited partnership. In response to Section II, Item 4, Lefebvre only lists Virginia Lefebvre as its sole general partner and names no limited partners. This is acceptable under the terms of *Attribution*, *supra*, as long as the requisite certifications are included. However, Lefebvre fails to state what ownership share its general partner will maintain. Accordingly, Lefebvre will be required to amend its application disclosing what portion of the partnership is held by the general partner.

13. *Equal Employment Opportunity Programs*. The Commission requires that if there will be five or more fulltime station employees, the applicant must complete and file Section VI of Form 301, and supply a statement detailing hiring and promotion policies for women and each minority group whose representation in the available labor force is five percent or greater in the proposed service area. Although Knight and Friendship have filed such statements, those statements are deficient. Neither Knight nor Friendship have listed women's organizations which will be used for recruitment as required by the instructions to Section VI. Accordingly, Knight and Friendship will be required to file an amended EEO programs with the presiding Administrative Law Judge, or an appropriate issue will be specified by the Judge.

14. *Air Hazard*. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and Markunas and CM have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna supporting structures proposed by Markunas and CM would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

15. *Other Matters*. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

16. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last date for filing minor amendments as of right. Under Section 1.65 the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANT	AMENDMENTS FILED
Shinnecock	September 15, 1988
MBBI	August 1, 1988 (engineering)
Knight	July 21, 1988
	September 15, 1988 (engineering)
	November 21, 1988
Gateway	August 15, 1988 (engineering)
Bay Media	August 5, 1988 (engineering)

17. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

18. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Markunas and CM would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

19. IT IS FURTHER ORDERED, That all of the numerous Informal Objections filed in this proceeding ARE HEREBY DENIED.

20. IT IS FURTHER ORDERED, That Gross and Shinnecock file an amendment indicating whether a directional antenna is being proposed to the presiding Administrative Law Judge within 30 days of the release of this Order.

21. IT IS FURTHER ORDERED, That Gross and Shinnecock file an amendment with the presiding Administrative Law Judge correcting any deficiency in the HAAT computations contained within their respective applications within 30 days of the release of this Order.

22. IT IS FURTHER ORDERED, That Markunas submit a map which shows the predicted 3.16 mV/m contour and the legal boundaries of Center Moriches with the presiding Administrative Law Judge within 30 days of the release of this Order.

23. IT IS FURTHER ORDERED, That CM shall file, within 30 days of the release of this Order, an amendment with the presiding Administrative Law Judge which will provide, for all limited partners, an insulation statement wholly satisfying the multiple ownership and cross-interest policy requirements of the Commission's *Attribution Reconsideration Order*, 58 RR 2d 604 (1985).

24. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Gateway shall submit an amendment with the presiding Administrative Law Judge describing its planned programming service relating to the issues of public concern facing its proposed service area.

25. IT IS FURTHER ORDERED, That LIU file an amendment clarifying its intention to operate either in a commercial or in a non-commercial educational capacity with the presiding Administrative Law Judge within 30 days of the release of this Order.

26. IT IS FURTHER ORDERED, That LIU shall submit an amendment which contains the information required by Section II, Item 4 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

27. IT IS FURTHER ORDERED, That Lefebvre file an amendment with the presiding Administrative Law Judge within 30 days of the release of this Order disclosing the portion of the limited partnership owned by the general partner.

28. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Knight and Friendship shall submit Section VI information in accordance with the requirement of Section 73.2080(c) of the Commission's Rules to the presiding Administrative Law Judge.

29. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

30. IT IS FURTHER ORDERED, That the Petitions for Leave to Amend filed by Shinnecock, MBBI, Knight, Gateway and Bay Media ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

31. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

32. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

33. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

[1] The parties filing objections in this proceeding are: Gilda Scharf, Sylvia R. Raskin, Walter Raskin, Cecile Wagner, Leon and Harriet Kalvin, Carmen Riggs, John P. White, Dr. Michael Beck, Manus H. O'Donnell, Howard Pierson, Mr. and Mrs. Michael D. Winokur, Mrs. W. J. Altreuter, Frank Beyer, Nassua Music Educators Association, Eleanor Estrin, Jack Gandry, Dr. and Mrs. Philip Glaser, Thomas E. Gowan, Mr. and Mrs. Dean Gurinsky, Jacob Hertz, Douglas William Hitzig, Isabelle K. Hitzig, Islip Arts Council, Inc., Richard Marlborough, Sol and Sarah Migdal, John E. Clark, Robert Carlen, Margery F. Tipple, Michael Shawn May, Ann N. Rosen, Antonia Trapani, Audrey

Stefano, Terry R. Gross, Myron Leslie, Amorn Itinanpong, J. Robert Michele, Ariane Carozza, David A. Gross, Amy E. Taber, Gennifer E. Musson, Cristina Meefi, Karen Meefi, Stephen M. Marcott, Pamela Ann Meefi, Rose Ann Sobbeck, Geraldine Edmonds, Cecile Muller, John A. Linder, Jr., Barbara Gibbons, Michael A. Gross, Anita A. Cafferty, Willard L. Hogeboom, Catherine Figueras, Dr. Robert Berson, Lawrence and Virginia Ramsden, Philip Golden, Danielle Schneider, Dorothy A. Marchette, June J. Votava, Muriel Foy, B. Mike Pekar, Martha E. Camponile, Thomas L. Ramsey, Donald E. Wilson, Norman Malkin, Alex K. MacDonald, Marc Leopold, Mr. and Mrs. Sandford Gall, Mr. And Mrs. Bellamore, Dr. Arnold W. Golfman and Herbert C. Cohen.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

COMMUNICATIONS SATELLITE CORPORATION — File No. CSS-87-010-LA

Application for authority to participate in the launch of the INTELSAT V-A (F-15)

ORDER AND AUTHORIZATION

Adopted: January 12, 1989; Released: January 26, 1989

By the Chief, International Facilities Division:

1. The above-captioned application filed by the Communications Satellite Corporation (Comsat) on March 31, 1987, and updated on December 1, 1988, requests authority to participate in the launch, positioning and in-orbit testing of the modified INTELSAT V-A (F-15) satellite. The application was placed on Public Notice on April 8, 1987. No comments were received.

2. The modified INTELSAT V-A (F-15) was shipped to the launch site in Kourou, French Guiana, on November 14, 1988, and is scheduled to be launched on January 26, 1989, utilizing an Ariane-2 launch vehicle. This satellite will replace the INTELSAT V-A (F-12) and will be positioned at a nominal location of 60 degrees East Longitude, where it will serve as the primary role satellite in the Indian Ocean Region (IOR). It is anticipated that the F-15 will be in service by approximately mid-April 1989.

3. The estimated costs associated with the modified INTELSAT V-A (F-15) are as follows:

(all amounts in real year dollars)	
FACC Contract (including delivery price, engineering charges and amendments)	$46,004,613
FACC Launch support	1,200,600
Performance incentives, capitalized	$ 1,406,773
Performance incentives, expensed	$12,658,680
Ariancespace Launch Vehicle and services	$37,425,823
Insurance (liability, launch and in-orbit failure)	$ 5,745,040
TOTAL INTELSAT	$104,441,529
TOTAL COMSAT (based on new 3/1/88 ownership share of 26.415565%)	$ 27,588,820

4. In view of the foregoing and the need to provide the necessary satellite facilities to meet traffic requirements, we conclude that the public interest will be served by a grant of the subject request.

5. Accordingly, IT IS ORDERED that application File No. CSS-87-010-LA is GRANTED, and Comsat is AUTHORIZED to participate in the launch and test program of the INTELSAT V-A (F-15) satellite to be positioned at 60 degrees East Longitude over the IOR, subject to the following terms and conditions:

(a) This authorization is limited to the described program. Any change in the authorized location due to a launch delay or other circumstances will be considered upon a proper request by Comsat for authority;

(b) Within 30 days after completion of the testing program, Comsat shall provide the Commission with a summary report of its results and upon request, shall make the detailed test data available;

(c) Conduct of the program authorized here shall be without interruption of commercial satellite service now authorized at U.S. earth stations;

(d) Neither this authorization nor any right granted herein shall be assigned or otherwise transferred without approval of the Commission; and

(e) Unless extended or modified for good cause, this authorization shall terminate six months after the release date of this order.

6. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules may be filed within 30 days of the date of public notice of this order (*See* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI TELECOMMUNICATIONS CORP.	File Nos. 2328 through 2330-CF-P-87
	2333-CF-P-87
	2348 and 2349-CF-P-87
	2356 and 2357-CF-P-87
	2395 through 2406-CF-P-87
	2491 and 2492-CF-P-87
	2521 through 2526-CF-P-87
	2544 through 2555-CF-P-87
	2603-CF-P-87
	2984 and 2985-CF-P-87
	3271 through 3274-CF-P-87
	3276 through 3278-CF-P-87
	3279 through 3280-CF-P-87
	3281 through 3295-CF-P-87
	3311 through 3324-CF-P-87
	3326 and 3327-CF-P-87
	3328 and 3329-CF-P-87
	3337 through 3339-CF-P-87

Applications For Construction
Permits in the Point-to-Point
Microwave Radio Common Carrier
Service

MEMORANDUM OPINION AND ORDER

Adopted: January 13, 1989; Released: January 26, 1989

By the Chief, Common Carrier Bureau:

1. On or about July 17, 1987, TeleSTAR, Inc. (TeleSTAR) filed a document titled "Exception to Granting Conditional Licenses to MCI for New Construction or Station Modifications" (exception) challenging the action taken by the Common Carrier Bureau's Domestic Facilities Division (Division) granting to MCI Telecommunications Corp. (MCI), on a conditional basis, the above-captioned point-to-point microwave radio service (PPMRS) common carrier applications.[1] This order reviews the arguments advanced by TeleSTAR and concludes that the Division's action should be affirmed.[2]

2. The Commission's Rules of Practice and Procedure, 47 C.F.R. § 1.1-1.1712, do not recognize the filing of "exceptions" in the type of proceeding now before the Common Carrier Bureau. Section 1.276 of the rules provides that "exceptions" may be filed only by parties seeking to appeal an initial decision rendered by an Administrative Law Judge. 47 C.F.R. § 1.276. Because the case before us does not arise from such a proceeding, TeleSTAR's filing of "exceptions" is improper. Nevertheless, in the interest of fairness to TeleSTAR, although captioned "exception," we will waive the rules and address its arguments as a petition for reconsideration. *See* 47 C.F.R. §§ 1.3, 1.106.

I. BACKGROUND

3. On March 25, 1987, TeleSTAR filed a "Petition for Revocation of FCC Operating Authority for MCI" (revocation petition) requesting immediate suspension and revocation of point-to-point microwave license authorizations issued to MCI. The petition alleged, *inter alia*, that MCI knowingly violated Section 319(a) of the Communications Act of 1934, as amended (the Act) and numerous FCC regulations and requirements, including the Section 21.3(a) prohibition against construction and operation of facilities without authorization, and the Section 21.100(d) requirements concerning frequency coordination with existing facilities prior to filing an application. The allegations made by TeleSTAR pertained to MCI's conduct in obtaining several point-to-point microwave service (PPMS) authorizations on specified microwave routes. In addition, TeleSTAR maintained that MCI violated local county building and zoning ordinances and misrepresented its various purported violations to the Commission. Furthermore TeleSTAR contended that MCI exhibited a lack of candor with the Commission in obtaining these authorizations. TeleSTAR argued that MCI's conduct in obtaining these authorizations demonstrated a pattern of knowing and deliberate disregard for Commission rules and regulations and raised a serious question regarding MCI's character qualifications to be a licensee. MCI and TeleSTAR filed various responsive pleadings. On January 25, 1988, the Commission issued a decision denying TeleSTAR's request to initiate a revocation proceeding against MCI under Section 312 of the Act. In that decision, the Commission did find certain isolated violations of Section 319(a) of the Act and Commission rules by MCI. [3] At the same time, it concluded that MCI had neither intentionally deceived or misrepresented matters relative to its applications, nor evidenced lack of candor in the matters alleged so as to cause the Commission to doubt its propensity for truthfulness as a licensee. *See MCI Telecommunications Corp.*, 3 FCC Rcd 509 (1988), as *supplemented*, FCC 88-49, released Feb. 18, 1988 (*MCI NAL*), *appeal pending sub. nom, TeleSTAR v. FCC*, No. 88-1153 (D.C. Cir.).

4. In May and June 1987, subsequent to the filing of the revocation petition, TeleSTAR filed several Petitions to Deny the above-captioned applications of MCI for eighteen new, or modifications to, eighty-eight repeater stations on the grounds that the allegations enumerated in the revocation petition also warranted denial of MCI's pending applications. TeleSTAR made no specific allegations of misconduct or rule violations by MCI with respect to the applications in question. Rather, it concluded that, on the basis of the allegations made in the revocation proceeding, MCI should be disqualified from obtaining the above-referenced authorizations. In opposition,[4] MCI maintained that TeleSTAR failed to raise any substantive grounds to justify denial of its pending applications or to demonstrate any specific connection between the allegations of misconduct made in the revocation petition and the subject applications. MCI argued further that, inasmuch as the Commission had not made a determination regarding the merits of the contentions raised by TeleSTAR in the revocation proceeding, it would be in-

appropriate to deny MCI's pending applications. Moreover, MCI asserted that even if the Commission rendered a decision adverse to it in the revocation proceeding, Commission policy, notably in the broadcast area, does not presume that a finding of misconduct at one station is necessarily predicative of the operation of a licensee's other stations, citing *Policy Regarding Character Qualification in Broadcast Licensing*, 102 FCC 2d 1179, 1223, *aff'd on recon.*, 1 FCC Rcd 421 (1986), *appeal dismissed sub nom. National Association of Better Broadcasting v. FCC*, No. 86-1179 (D.C. Cir. 1987). Alternatively, MCI suggested that the Bureau grant, on a conditional basis, its applications pending the resolution of the issues raised in the revocation proceeding. According to MCI, this option would allow the Commission to consider the charges levied by TeleSTAR against MCI while not undermining the interests of the public in continuing to receive the telecommunications services offered by MCI. TeleSTAR opposed MCI's request for conditional grants on the grounds that, given the serious nature of the alleged violations raised in the revocation proceeding and the relevance of those issues to the Commission's consideration of whether the grant of MCI's applications is in the public interest, any conditional grants of new applications to MCI would be premature and contrary to Sections 309 and 312 of the Act. TeleSTAR requested that MCI's applications be denied or designated for hearing. In response to TeleSTAR's opposition, MCI took issue with TeleSTAR's claim that a grant of its applications would be premature under the circumstances. MCI claimed that TeleSTAR erroneously asserted that the Commission is bound, as a matter of law, to withhold action on the applications against which TeleSTAR has filed its Petitions to Deny due to the character issues it raised in the revocation proceeding.

5. On June 26, 1987, MCI filed a letter providing further support for conditional grants of its pending applications. According to MCI, to otherwise "freeze" the processing of its applications would have a deleterious impact on the quality and degree of service provided to end-users. In response to MCI's renewed request for conditional grants, TeleSTAR restated its view that the issuance of conditional grants would be premature and contrary to Sections 309 and 312 (a) of the Act.[5] TeleSTAR also stated that due to the "substantial and material" allegations of fact raised against MCI, Section 309 requires that the Commission either deny or designate for hearing the pending applications filed by MCI. In the Reply, dated July 6, 1987, MCI disputed TeleSTAR's contention that the Commission is without legal authority to authorize conditional grants of applications against which Petitions to Deny have been filed. To support this contention, MCI cited numerous Commission precedents illustrative of circumstances in which the Commission has made conditional grants to an applicant pending final disposition of a challenge to the qualifications of an applicant to be a Commission licensee. Also, MCI maintained that the Commission is not bound to withhold action on an application against which a petition has been filed because it has the authority under Section 319 (d) of the Act to waive the requirement of a construction permit application.

6. After consideration of the arguments made by the parties, the Division, by letter dated July 10, 1987, concluded that MCI's request for conditional grants was warranted and authorized the grant of some, but not all, of MCI's applications conditioned on the outcome of the *MCI NAL* proceeding.[6] It is this action which TeleSTAR challenges as being unauthorized under Section 309 of the Act and inconsistent with Section 312 of the Act.

II. DISCUSSION

7. In the "exception" TeleSTAR argues that the Division acted improperly in conditioning MCI's authorization. TeleSTAR, in its pleadings in the *MCI NAL* proceeding, also made this contention to which the Commission replied that the Division's conditioning action was "entirely appropriate . . . ." *MCI NAL* at n.17. The issue has thus already been decided by the Commission. The Commission's decision that conditioning MCI's authorizations on the outcome of the *MCI NAL* proceeding was proper is consistent with the Commission precedent. *See, e.g., Advanced Mobile Phone Service, Inc.*, 91 FCC 2d 513, 520 n.19, 522 (1982).

8. Having disposed of the issue raised by TeleSTAR with respect to the propriety of the conditioning, we address the question of whether the decision in *MCI NAL* requires further Section 309 proceedings regarding MCI's conditional authorizations. As previously mentioned, the Commission addressed this question in *MCI NAL*, and concluded that neither the isolated violations nor TeleSTAR's allegations for which no violations were found raised substantial and material questions of fact requiring a hearing into MCI's qualifications. In that decision, the Commission noted that

> [If] we were evaluating TeleSTAR's allegations under Section 309(e) of the Act, we would find no basis for initiating revocation proceedings based on the facts before us. The isolated violations at issue here do not warrant the inference that MCI is not qualified to be a Commission licensee. In addition, with respect to those allegations for which we find no violations, we would also conclude, if applying the Section 309(e) standard, that no substantial and material questions of fact have been raised that would require a hearing to determine whether such violations occurred.[7]

9. Finally, we note that TeleSTAR also argues that the conditional grants to MCI should be revoked pursuant to Section 312(a). The Commission has already decided that the underlying MCI behavior at issue here does not justify revocation. *See MCI NAL*. Accordingly, TeleSTAR's argument in this regard is rejected.

10. Accordingly, IT IS ORDERED that the "Exception to Granting Conditional Licenses to MCI for New Construction or Station Modifications" filed by TeleSTAR, Inc. IS DENIED, and the Division's conditional grant authorizations ARE AFFIRMED.[8]

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] It is difficult to ascertain the precise date of TeleSTAR's filing of the "Exception" because there is no record of the document being officially filed at the FCC. *See* Section 0.401(a)(1)(i), 47 C.F.R. § 0.401(a)(1)(i). Nevertheless, since we informally received a copy of the "Exception", we shall consider the document in the interest of treating TeleSTAR fairly.

[2] The first ten above-referenced applications or application sets were conditionally granted to MCI by letter dated July 10, 1987. The remaining eight applications or application sets were conditionally granted to MCI by letter dated July 31, 1987.

[3] The Commission found the following violations against MCI: (1) violations of premature and/or unauthorized construction on four routes; (2) unauthorized operation of facilities on two routes; (3) failure to timely file a license application to cover a construction permit; (4) failure to disclose unresolved frequency coordination disputes on two occasions; and (5) on four occasions, incorrectly indicating in FCC Application Form (FCC Form 435) that the site involved the use of federal lands. Of these violations, only two were found to be actionable under the statute of limitations regarding forfeitures imposed by Section 503(b) of the Act. For those violations the Commission issued a Notice of Apparent Liability for forfeiture in the amount of $10,000. MCI has paid the forfeiture assessed against it.

[4] MCI Opposition to Petition to Deny, File Nos. 2521 through 2526-CF-P-87, filed May 29, 1987.

[5] TeleSTAR's Reply, dated July 2, 1987.

[6] The following applications were granted on July 10, 1987:

File Nos.

2328 through 2330-CF-P-87	2491 and 2492-CF-P-87
2333-CF-P-87	2521 through 2526-CF-P-87
2348 and 2349-CF-P-87	2544 through 2555-CF-P-87
2356 and 2357-CF-P-87	2603-CF-P-87
2395 through 2406-CF-P-87	2984 and 2985-CF-P-87

Each of these applications had been listed on Public Notice as acceptable for filing and had been determined to be not mutually exclusive with any other pending applications. The Division found that the thirty-day public notice and comment period required by Section 21.27 of the rules had not expired for several other pending applications for which MCI requested conditional grant authorizations. As to these applications, the Division declined to issue conditional grants until the thirty-day notice and comment period had expired. *See* Letter to MCI dated July 28, 1987 in which the remaining applications were granted on a conditional basis.

[7] *MCI NAL* at n.18.

[8] We note that the grants remain conditioned on the outcome of TeleSTAR's pending appeal of *MCI* NAL.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 87-568

In the Matter of

AT&T COMMUNICATIONS Transmittal Nos. 1336
Revisions to Tariff F.C.C. No. 12 and 1349

MEMORANDUM OPINION AND ORDER

Adopted: October 28, 1988; Released: October 28, 1988

By the Chief, Common Carrier Bureau:

I. BACKGROUND

1. On September 1, 1988, American Telephone and Telegraph Company (AT&T) filed Transmittal No. 1336 to introduce Option III of the Virtual Telecommunications Network Service (VTNS). On September 9, 1988, AT&T filed supplemental Transmittal No. 1349 which included automatic number identification (ANI) as a feature within VTNS Option III (VTNS III). Although VTNS III is described as a "generally available interstate service,"[1] VTNS III is an integrated voice and data network designed specifically for the use of American Express Company (American Express). This is the fourth in a series of non-governmental customer individualized offerings by AT&T which consist of a customized bundled service priced at a fixed rate over a specified time period.[2] VTNS III is scheduled to become effective on October 31, 1988.

2. On September 16, 1988, the Independent Data Communications Manufacturers Association, Inc. (IDCMA) and US Sprint Communications Company (US Sprint) filed petitions for rejection or in the alternative suspension and investigation. Also on that date, MCI Communications Corporation (MCI) filed a petition for investigation, and Puerto Rico Telephone Company (PRTC) filed a petition for rejection of the filing. AT&T filed its reply on September 26, 1988.

II. SERVICE DESCRIPTION

3. AT&T states that VTNS is generally available at the request of customers, and that VTNS III is offered pursuant to a customer's request for a service that met their specific needs and was functionally and economically competitive with other alternatives, including the offerings of other service providers or a customer owned network. D&J at 1-3. Accordingly, the rates for this service were set not only to recover the costs of providing the levels and quantities of service required by the customer, but also to be competitive with the customer's other alternatives. *Id.* at 6-7.

4. VTNS III is generally the same as the previous VTNS offerings, but offers a number of new or different features, and is priced differently from previous VTNS offerings. VTNS III accommodates calls to or from customer specified non-port locations, provides 1.544 Mbps Data Transmission Capabilities (DTCs), and includes additional rate schedules and customer choices. *Id.* at 4-6. The initial rate period under Rate Schedules A-C is 18 seconds with one second increments. Ports which are used only for terminating traffic with the use of port access telephone numbers, when customer equipment provides answer supervision on the first ring in 90 out of every 100 calls, are charged under Rate Schedules D and E pursuant to a six second initial period with one second increments. *Id.* at 11-15. The customer must preselect one of two rate options for measured remote ports, option one for ports which both originate and terminate traffic, and option two for ports which only terminate traffic. *Id.* at 15. At the request of the customer, AT&T provides a usage volume pricing plan on Rate Schedules A and B under which the customer receives a 10 percent discount during any month in which the usage from pre-selected ports exceeds $30,000.00. *Id.* at 17. Two other new features included in VTNS III are a network prompter which allows a call to be routed by codes provided the caller by the network (*id.* at 18), and ANI. AT&T Transmittal No. 1349.

5. AT&T provides demand and revenue information regarding the impact of VTNS III on the other services of AT&T, and supporting financial information indicating that VTNS III recovers its costs on a fully distributed basis and on a revenue less costs basis. According to AT&T, prospective cost studies indicate that VTNS III will have a positive impact on net earnings in 1990 in both the private line and switched services categories, and on total interstate earnings. D&J at 28-35.

III. PLEADINGS

6. IDCMA asserts that VTNS III should be rejected because it is patently unlawful. In support of this claim, it demonstrates that each of the VTNS options are as individual as the customers themselves, and observes that not only are 1.544 Mbps DTCs being offered for the first time with a VTNS offering, but that the rates and elements of the three VTNS options differ substantially. IDCMA Petition at 7-8 & Appendix A. While AT&T has created general regulations for VTNS, the options themselves are not more generalized, asserts IDCMA. Since VTNS is not a generalized offering, it violates the basic tenet of common carriage that a common carrier "undertakes to carry for all people indifferently." [3] IDCMA further asserts that the pricing and conditions of service for VTNS III are unlawfully discriminatory, noting that AT&T does not deny that VTNS provides options to a customer that are not otherwise available. AT&T instead asserts that the bundled service capabilities for single customers achieve "economies" which are translated into customer specific discounts. IDCMA charges that AT&T never provides an explanation of these economies, nor explains why these cannot be made generally available. IDCMA asserts that this black box solution is simply a source of cheap bandwidth discounts to individual customers. *Id.* at 7-10 & n.8.

7. Allowing AT&T to justify these tariffs on the basis that "every customer is different," contends IDCMA, will effectively deregulate AT&T. IDCMA urges the Commission to conclude the pending Tariff 12 investigation immediately, and suspend VTNS III pending that decision.

The solution of the broader legal principles in the Tariff 12 investigation could then be applied to VTNS III. IDCMA contends that the continuing investigation allows the "commercial expectations" of AT&T to take precedence over the non-discrimination provisions of the Communications Act.[4] IDCMA believes that the Commission's failure to conclude the Tariff 12 investigation permits AT&T to continue to market Tariff 12 offerings, causing continued damage to the systems integrators market, and "raise the expectations of a major user of telecommunications services." *Id.* at 5-6, 17-19.

8. According to IDCMA, AT&T has claimed no new functionalities for VTNS; as a new service it uses the same facilities as AT&T's old services. The fact that VTNS III allows the customer to reduce the total number of ports and DTCs by as much as 50 percent, IDCMA continues, undercuts AT&T's arguments of the uniqueness of the offering, and the special knowledge of the customer's network required to construct VTNS. IDCMA compares the price of a number of components of VTNS III with AT&T's generally tariffed rates to calculate a discount of 33 percent for VTNS III 1.544 Mbps service. IDCMA asserts that this and other discounts, as well as the preferential treatment for fractional T-1 service to the VTNS III user, makes this offering inherently discriminatory. IDCMA interprets the location of Hubs and Measured Ports at AT&T's central offices, rather than at the customer's premises, as indicative of collocation, which is discriminatory in the provision of collocation opportunities. *Id.* at 11-15. IDCMA reasserts that the legal precepts for VTNS are deficient; not only is the legal basis unsound, the only unique feature of this service is its discriminatory pricing scheme. These facts, in addition to the inherent violation of the Commission's rate structure and resale guidelines, concludes IDCMA, requires rejection of the tariff. *Id.* at 15-17.

9. Finally, IDCMA maintains that the discriminatory method of providing transmission service represented by VTNS offerings violate the language and purpose of the Act, and that VTNS threatens to foreclose all competition from systems integrators. IDCMA Petition at 1-3. Not only are service integrators precluded from utilizing VTNS, because only AT&T knows what comprises VTNS, they cannot acquire transmission service at the same rates and conditions as provided by AT&T in its discounted bundle of services. IDCMA charges that AT&T's practice of filing VTNS tariffs after closing its deal further precludes the use of AT&T transmission services by system integrators competing in this market. According to IDCMA, VTNS reduces systems integrators to the role of commodity suppliers. In order to acquire AT&T transmission services for a customized package, systems integrators are left only with the choice of an unwanted partnership with AT&T. IDCMA asserts that this exposes the systems integrators to the risk of AT&T walking away with a customer once provided with the equipment based solution. *Id.* at 3-4.

10. US Sprint asserts that, even though AT&T describes this offering as generally available, the extensively detailed requirements for the number of ports in specific local access and transport areas (LATAs) and other aspects of this offering make clear that this offering is for the exclusive use of one customer. The only customization, asserts US Sprint, is the customized price, which includes shorter call duration periods than VTNS I and II, and volume discounts, both provided at the request of American Express. US Sprint Petition at 1-3 & n.2. US Sprint argues that the bundling involved in VTNS III makes this offering effectively available to only one customer, which is inconsistent with a system of tariff regulation. US Sprint asserts that the tariff violates Section 202(a) of the Act by failing to be as generalized as possible, precluding resale, and evading the Commission's Private Line Guidelines.[5]

11. US Sprint further maintains that the tariff must be rejected or suspended because of serious deficiencies in the supporting information filed. Not only is the information on the MR-1 form meager, says US Sprint, the alleged profitability of VTNS III through an analysis of the rates charged under various schedules and the charges for access incorporated in various schedules is also questionable. US Sprint then protests the continued reduction of the information supplied regarding the expenses associated with VTNS offerings, and observes that many of these expense categories appear understated when compared with the information filed with the VTNS II tariff proposal. Without further information, concludes US Sprint, the reasonableness of the rates cannot be determined. *Id.* at 4-8.

12. MCI maintains that all four Tariff 12 arrangements resulted from one-on-one negotiations, and that such arrangements result in the capture of business for extended time periods. MCI Petition at 3. Issues of unjust and unreasonable advantages being given to VTNS customers to the detriment of other customers of AT&T, subsidies of VTNS by other AT&T customers, and compliance with the Commission's *Private Line Guidelines* and resale guidelines exist in this filing, as they do in all of AT&T's VTNS filings. *Id.* at 4-5. MCI asserts that without a timely analysis and conclusion of this matter, the Commission will only be "paying lip service" to its regulatory obligations, and that AT&T's potential customers will perceive little or no regulatory risk of the offers being rejected by the Commission. Under the current circumstances, the exceptions being created with the unresolved Tariff 12 filings will become the rule, with AT&T having effectively achieved deregulation without Commission action. *Id.* at 5-6.

13. MCI urges the Commission to require VTNS to be offered by a general tariff. *Id.* at 7. MCI contends that even AT&T recognizes the broader appeal of VTNS as AT&T itself describes VTNS as a generally available interstate service, yet the few general regulations in the VTNS tariff address none of the integral components of the offering. *Id.* at 8. The result, avers MCI, is a defensive "lock in" strategy which AT&T uses to capture targeted users and preserve the majority of the large user market. Although individual case basis rates are authorized by the Commission, notes MCI, these are allowed under only limited circumstances, none of which are present with the VTNS tariffs. *Id.* at 9. The failure of the Commission to require VTNS to be offered by general tariff will permit AT&T to continue to negotiate individual deals with targeted customers, an activity which MCI asserts the law does not allow. *Id.* at 10.

14. MCI further states that VTNS II and III must be examined, as VTNS I has been, to determine not only whether it is unjustly and unreasonably discriminatory but also whether there is discrimination among the three offerings.[6] It asserts that the Commission must apply a three part test which would compare services to determine if they are "like" services, determine if there is a disparity in the charges for or conditions of service, and analyze the disparity for justification.[7] MCI details a num-

ber of specific aspects of VTNS Options I, II, and III which differ, and suggests they should be investigated for discrimination. MCI asserts that only the offering of VTNS on an unbundled, general basis can prevent discrimination among present and future VTNS customers. *Id.* at 12-13. MCI also questions whether VTNS III is cross-subsidized at the expense of other AT&T customers, specifically identifying the difference in rates among the three VTNS options, the failure of AT&T to identify the cost causation or efficiencies which contribute to the alleged decrease in cost of service for these customers, and the unlikelihood that the Installation Charge recovers the marketing and sales expense resulting from nine months of negotiations, or the engineering and design expenses required to "customize" VTNS III. *Id.* at 13-15.

15. MCI also argues that VTNS III violates the Commission's *Private Line Guidelines*, and that AT&T fails to meet the burden of proof that dominant carriers must satisfy to justify departure from these requirements. According to MCI, VTNS III is not integrated into the same rate structures as its components, is restricted to a single customer, and fails to employ consistently-defined rate elements.[8] Finally, MCI asserts that VTNS III violates the Commission's policy against unreasonable restrictions against resale,[9] which protect against the targeting of preferential service to one customer to the exclusion of others. *Id.* at 17.

16. PRTC asserts that the prohibitions of Section 202(a) of the Act are very broad and prevent discriminatory tariffs like VTNS III, a tariff which is custom only in the sense that it provides favored rates to selected customers. PRTC Petition at 1-3. PRTC notes that AT&T attempts to justify VTNS III through the use of the net revenue standard, originally developed for optional calling plans,[10] but asserts that the use of this standard is improper in the present context. PRTC asserts that AT&T's overwhelming competitive advantage in the custom-designed services market, as well as the small size of this market, is much different than the large message telecommunications service (MTS) market in which there are many competitors, and therefore does not justify the expansion of the net revenue standard beyond the MTS market. The use of the net revenue test is also inappropriate, avers PRTC, where resale is impossible, as it is with VTNS offerings. PRTC also reasons that AT&T's expansion of the net revenue test from switched revenues to firm-wide revenues would allow for cross-subsidization from any of AT&T's service offerings, including non-regulated offerings. *Id.* at 3-6. Finally, PRTC objects to VTNS III on the basis that offerings such as this will inhibit the ability of PRTC and other "Commonwealth communications" entities to compete against AT&T, thereby threatening the basic sources of revenues for these companies, and eventually threatening universal service in Puerto Rico and other areas. *Id.* at 6-8.

17. In its reply, AT&T asserts that VTNS III was developed, as were all of the VTNS offerings, in response to the specific needs of individual customers, subject to the general VTNS regulations. AT&T maintains that it has provided all of the data required by the Commission's Rules, including fully distributed cost information showing a net profit in a representative year. AT&T Reply at 1-4. AT&T asserts that VTNS III is not limited to one customer, but that even if it were, nothing in the Act precludes a carrier from responding to a reasonable request for service from a customer. In fact, argues AT&T, such response would be required by Section 201(a) of the Act. *Id.* at 4-6. AT&T states that to offer VTNS via a general tariff would destroy the unique economies of integration and design inherent to VTNS. It also asserts that VTNS does not restrict resale, and is in compliance with the Commission's *Private Line Guidelines*. Furthermore, AT&T claims, both MCI and US Sprint offer customized services, therefore any arguments of illegality would apply to them as well. *Id.* at 6-8. In response to the petition by IDCMA, AT&T states that tariff proceedings are not the proper vehicle for contesting untariffed practices, such as CPE marketing and collocation. AT&T avers that even though these are not part of VTNS III, such an offering would be consistent with the non-structural separations rules of the Commission, and in furtherance of the benefits the Commission intended to flow from the removal of structural separations.[11] AT&T concludes that its cost support is sound and that the attacks of the petitioners based upon the cost and other financial information provided misinterpret the materials provided by AT&T, or are wrong. *Id.* at 10-18.

IV. DISCUSSION

18. The Common Carrier Bureau has reviewed Transmittal Nos. 1336 and 1349 and the pleadings filed by petitioners and by AT&T. We conclude that no compelling arguments have been presented that the tariff proposal is so patently unlawful as to warrant rejection.

19. We also conclude, however, that certain issues warrant further investigation. Inasmuch as we have already initiated an investigation to examine DTSN, VTNS I, and VTNS II, which present similar concerns, we will include this transmittal in the ongoing investigations of AT&T's Transmittal Nos. 895, 961, 1018, 1102, and 1145. In a subsequent Order, we will designate the issues to be investigated and establish a pleading cycle at that time. We have also concluded that the VTNS III offering should be subject to accounting safeguards to prevent subsidization of VTNS III service with revenues from other services. This approach balances the interests of prospective VTNS III customers, competing vendors, AT&T, and AT&T's ratepayers. We adopted similar mechanisms in our *DTSN Order*, *VTNS I Order*, and *VTNS II Order*, and found that such action provided a reliable safeguard against cross-subsidization.

20. Accordingly, we direct AT&T to offer the Virtual Telecommunications Network Service, Option III, on a separate accounting basis. Specifically, revenue, cost, and investment amounts relating to the Virtual Telecommunications Network Service, Option III, will be excluded from the Interim Cost Allocation Manual private line category for purposes of applying the equalization requirement and measuring compliance with applicable provisions of Part 65 of the Commission's Rules. This will ensure that rates for other AT&T Communications private line services are not increased to compensate for any earnings shortfall that may be produced by Virtual Telecommunications Network Service, Option III. We waive the Interim Cost Allocation Manual and Part 65 requirements through December 31, 1988, to the extent necessary to exclude the Virtual Telecommunications Network Service, Option III.

V. ORDERING CLAUSES

21. Accordingly, IT IS ORDERED, that the petitions for rejection, suspension, and investigation of AT&T Communications Transmittal Nos. 1336 and 1349 ARE GRANTED to the extent indicated herein, but are otherwise DENIED.

22. IT IS FURTHER ORDERED, pursuant to Sections 218 and 220(a) of the Communications Act, 47 U.S.C. §§ 218 and 220(a), and the authority delegated under Sections 0.91(g) and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, that AT&T shall separately account for revenues, costs, investment, and net earnings associated with Virtual Network Communications Service in accordance with para. 20, *supra*, until further notice.

23. IT IS FURTHER ORDERED that Part 65 of the Commission's Rules, 47 C.F.R. Part 65, IS WAIVED to the extent indicated in para. 20, *supra*.

24. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 201(b), 204(a), and 205 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201(b), 204(a) and 205, that an INVESTIGATION IS INSTITUTED into the lawfulness of the above-captioned tariff revisions and IS INCORPORATED into the Commission's ongoing investigation in CC Docket No. 87-568.

25. IT IS FURTHER ORDERED that American Telephone and Telegraph Company shall be a party to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] AT&T Description and Justification (D&J) at 1.

[2] The first three non-governmental offerings of custom service tariffs by AT&T are currently under investigation. These are Digital Tandem Switched Network (DTSN) Service (created for the General Electric Company), Transmittal Nos. 895 and 961, 2 FCC Rcd 5493 (1987) (*DTSN Order*), and Order Designating Issues for Investigation, CC Docket No. 87-568, 2 FCC Rcd 7389 (1987) (*DTSN Designation Order*); Virtual Telecommunications Network Service, Option I (VTNS I) (designed for the Dupont Company), Transmittal Nos. 1018 and 1102, 3 FCC Rcd 995 (1988) (*VTNS I Designation Order*) (designating issues for investigation and including them in the ongoing investigation in CC Docket No. 87-568); and Virtual Telecommunications Network Service, Option II (VTNS II) (designed for the Ford Motor Company), Transmittal No. 1145, Memorandum Opinion and Order, 3 FCC Rcd 2837 (1988) (*VTNS II Order*) (indicating that VTNS II would be included in the CC Docket No. 87-568 investigation) (collectively *Tariff 12 Investigation*).

[3] IDCMA Petition at n.5 (*quoting* National Association of Regulatory Utility Commissioners v. F.C.C., 525 F.2d 601, 641 (D.C. Cir. 1976)).

[4] Communications Act of 1934, 47 U.S.C. 151 *et seq.* (Act).

[5] US Sprint Petition at 4. 47 C.F.R. § 61.40 (*Private Line Guidelines*).

[6] MCI Petition at 10-11. MCI comments that AT&T has a superior ability to engage in discrimination because of the unique ability AT&T has to provide a complete network solution through a combination of its own tariffed and non-regulated offerings and equipment. *Id.* at 11 n.22.

[7] *Id.* at 11 (*referencing* MCI Telecommunications Corp. v. F.C.C., No. 86-1181, slip op. at 15 (D.C. Cir., Mar. 29, 1988)). MCI notes that although discrimination may be justified under a competitive necessity theory, no such claim is made here by AT&T (*citing* AT&T v. F.C.C., 449 F.2d 439 (2d Cir. 1971)).

[8] *Id.* at 15-17 (*citing* specific language from Private Line Rate Structure and Volume Discount Practices, CC Docket No. 79-246, Report and Order, 97 F.C.C. 2d 923, 929-941 (1984)).

[9] Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, 60 FCC 2d 261 (1976).

[10] Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans, CC Docket No. 84-1235, 50 Fed. Reg. 42945 (1985) (*OCP Guidelines Order*).

[11] AT&T Reply at 8-10 & n.* (*citing* Furnishing of CPE and Enhanced Services by AT&T, 102 FCC 2d 655, 656, 678 (1985), on *reconsideration*, 104 FCC 2d 739 (1986)).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-471

In the Matter of

AT&T COMMUNICATIONS Transmittal No. 1215
Tariff F.C.C. No. 15
Holiday Rate Plan

ORDER

Adopted: November 17, 1988; Released: November 18, 1988

By the Chief, Common Carrier Bureau:

1. On October 20, 1988, MCI Telecommunications Corporation (MCI) and US Sprint Communications Company (US Sprint) requested confidential treatment[1] of certain information filed that same date pursuant to the requirements of paragraph 45 of our Order designating issues for investigation in the above-captioned proceeding.[2]

2. On October 31, 1988, the Independent Data Communications Manufacturers Association, Inc. (IDCMA) filed a formal letter request for access to the paragraph 45 information filed by MCI and US Sprint. AT&T filed a request [3] pursuant to the Freedom of Information Act and the Commission's Rules[4] for this same information on November 2, 1988.

3. The Common Carrier Bureau is reviewing the requests filed by IDCMA and AT&T. We have determined that a ruling on the pending requests may affect the rights and opportunities of the parties to this proceeding to review information upon which the Commission may base a decision. Insofar as a determination of the issues raised in the requests requires additional time for analysis and reply, and cannot be completed before the November 21, 1988 deadline for filing comments and oppositions in this proceeding, we have concluded that the dates for filing the comments, oppositions, and replies in this proceeding should be extended an additional 14 days.[5] We plan to issue rulings shortly on the requests for access filed by IDCMA and AT&T.

4. Accordingly, IT IS HEREBY ORDERED, pursuant to Sections 4(j) and 5(c) of the Communications Act of 1934, 47 U.S.C. §§ 154(j), 155(c), and the authority delegated thereunder pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91, 0.291, that the pleading cycle in CC Docket No. 88-471 IS EXTENDED, and that the deadline for filing comments and oppositions shall be December 5, 1988, and for replies shall be December 20, 1988.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Confidential treatment of this information was requested under Section 218 of the Communications Act of 1934, 47 U.S.C. § 218, and Section 0.459 of the Commission's Rules, 47 C.F.R. § 0.459. MCI also requested confidential treatment for additional information, filed on October 21, 1988, which was inadvertently omitted from its direct case.

[2] AT&T Communications, Transmittal No. 1215, CC Docket No. 88-471, Memorandum Opinion and Order, FCC 88-299, Mimeo No. 37467, released Sept. 20, 1988 (*Investigation Order*).

[3] F.O.I.A. Control No. 88-190.

[4] *See* Freedom of Information Act, 5 U.S.C. § 552; Section 0.461 of the Commission's Rules, 47 C.F.R. § 0.461.

[5] The deadlines for filing comments, oppositions, and replies in this proceeding are established in paragraph 48 of the *Investigation Order*.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-136

In the Matter of

SOUTHWESTERN BELL TELEPHONE COMPANY
Revisions to Tariff F.C.C. No. 68

Transmittal Nos. 1743 and 1745

ORDER

Adopted: January 13, 1989; Released: January 19, 1989

By the Chief, Common Carrier Bureau:

1. On December 6, 1988, Southwestern Bell Telephone Company (Southwestern) filed Transmittal Nos. 1743 and 1745 proposing new individual case base (ICB) rates for Southwestern's DS3 service. Transmittals 1743 and 1745 are scheduled to become effective on January 24, 1989, and January 25, 1989, respectively.

2. On December 22, 1988, Local Area Telecommunications, Inc. (Locate) filed petitions to reject Transmittals 1743 and 1745.[1] Both petitions were accompanied by motions to accept late-filed pleadings.[2] In its petitions, Locate argues that Southwestern's transmittals should be rejected because the proposed rates are not adequately supported by cost data, as required by Section 61.38 of the Commission's Rules, 47 C.F.R. § 61.38. Alternatively, Locate requests that Transmittals 1743 and 1745 be suspended and incorporated into the pending investigation of ICB tariffing of DS3 services in CC Docket No. 88-136.

3. On January 3, 1989, Southwestern filed oppositions to Locate's motions to accept late-filed pleadings, as well as replies to Locate's petitions to reject Transmittals 1743 and 1745. [3] Southwestern argues that Locate's motions should be denied because Locate has not demonstrated good cause for filing its petitions late. Southwestern also contends that even if the Bureau grants Locate's motions, the petitions to reject should be denied because Southwestern provided adequate cost support for its ICB filings. Southwestern further observes that filings similar to Transmittals 1743 and 1745 have become effective subject to the outcome of the pending ICB investigation. On January 3, 1989, US Sprint Communications Company Limited Partnership (US Sprint) filed comments on Locate's petitions to reject, accompanied by a motion for leave to file comments (contingent on the Bureau's acceptance of Locate's late-filed petitions).[4] US Sprint asserts that Locate has not established good cause for acceptance of its late-filed petitions to reject. Moreover, US Sprint argues, even if the Bureau considers these petitions, there is no reason to depart from the Bureau's policy of suspending ICB filings for one day and incorporating them into the pending ICB investigation.

4. The Common Carrier Bureau has reviewed Transmittals 1743 and 1745, the petitions filed by Locate, Southwestern's replies, and the comments filed by US Sprint. Given the brief nature of the delay occasioned by Locate's one and two day-late filings, we find that no parties would be prejudiced by our acceptance of Locate's filings. Nevertheless, we find that no compelling arguments have been presented that Southwestern's tariff filings are patently unlawful so as to require rejection. However, to the extent that Transmittals 1743 and 1745 propose ICB rates for DS3 services, we grant Locate's request that both transmittals be included in the ongoing investigation instituted in CC Docket No. 88-136.[5]

5. Accordingly, IT IS ORDERED, that the motions to accept late-filed pleadings filed by Local Area Telecommunications, Inc. ARE GRANTED.

6. IT IS FURTHER ORDERED that the petitions to reject filed by Local Area Telecommunications, Inc. against Southwestern Bell Telephone Company, Tariff F.C.C. No. 68, Transmittal Nos. 1743 and 1745, ARE GRANTED to the extent indicated herein, but otherwise ARE DENIED.

7. IT IS FURTHER ORDERED that Southwestern Bell Telephone Company, Tariff F.C.C. No. 68, Transmittal Nos. 1743 and 1745, are subject to the investigation instituted in CC Docket No. 88-136. Southwestern Bell Telephone Company may file revisions, to be effective on not less than one day's notice, in order to advance the effective dates of the referenced transmittals. For this purpose, we waive Sections 61.56, 61.58, and 61.59, of the Commission's Rules, 47 C.F.R. §§ 61.56, 61.58, 61.59, and assign Special Permission No. 89-41.

8. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the subject tariff revisions ARE SUSPENDED for one day.

9. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 204(a) of the Communications Act, 47 U.S.C. §§ 154(i), 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, Southwestern Bell Telephone Company shall keep accurate account of all amounts received pursuant to Individual Case Basis rates for DS3 services which are the subject of such investigation.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Locate Petition to Reject Southwestern Transmittal 1743, filed Dec. 22, 1988; Locate Petition to Reject Southwestern Transmittal 1745, filed Dec. 22, 1988.

[2] Motion to Accept Petition Against Transmittal 1743, filed Dec. 22, 1988; Motion to Accept Petition Against Transmittal 1745, filed Dec. 22, 1988. Locate's petition to reject Transmittal 1743 was filed two days late; its petition to reject Transmittal 1745 was filed one day late. In both instances, Locate contends that due to a miscommunication, its counsel was unable to obtain essential information until December 22, 1988.

[3] Southwestern Opposition and Reply (Transmittal 1743), filed Jan. 3, 1989; Southwestern Opposition and Reply (Transmittal 1745), filed Jan. 3, 1989.

[4] US Sprint Comments on Petitions To Reject and Contingent Motion for Leave To File Comments, filed Jan. 3, 1989.

[5] Local Exchange Carriers' Individual Case Basis DS3 Service Offerings, CC Docket No. 88-136, Order Designating Issues for Investigation, 3 FCC Rcd 2582 (1988); *See also* Supplemental Order Designating Issues for Investigation, CC Docket No. 88-136, 3 FCC Rcd 6066 (1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-561

In the Matter of

JACK E. ONDRACEK
Myrtle Creek, Oregon

License of Radio Station
KRGL(AM), Myrtle Creek, Oregon

Order to Show Cause Why the
License of Station KRGL(AM),
Myrtle Creek, Oregon, Should
Not Be Revoked

ORDER TO SHOW CAUSE AND NOTICE OF APPARENT LIABILITY

Adopted: December 2, 1988; Released: January 25, 1989

By the Commission:

1. The Commission has before it for consideration: (a) the license of Jack E. Ondracek, for Radio Station KRGL(AM), Myrtle Creek, Oregon; and, (b) the results of its investigation into KRGL's unauthorized silent status.

2. In September 1986, the Commission received information indicating that the captioned licensee had ceased operation of KRGL in mid-March 1986. Commission personnel visited the site on November 17, 1986, and found it abandoned. The Commission sent a letter of inquiry to the licensee at the address that appeared in Commission records. The letter, postmarked July 15, 1987, was returned stamped: "Return to Sender-Box Closed."[1] Commission personnel revisited the site on March 10, 1988, and again found it abandoned. Thus, it appears that the station has not resumed operation since it left the air in March 1986. Furthermore, the licensee has neither requested Commission permission to remain off the air nor turned in its license, in apparent violation of Sections 73.1740(a)(4) and 73.1750 of the Commission's Rules.[2]

3. Accordingly, IT IS ORDERED, That pursuant to Section 312(a)(3) and (4) of the Communications Act of 1934, as amended, Jack E. Ondracek is DIRECTED TO SHOW CAUSE why the license for Radio Station KRGL(AM), Myrtle Creek, OR, should not be REVOKED, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issue:

(a) To determine whether Jack E. Ondracek violated Sections 73.1740(a)(4) and/or 73.1750 of the Commission's Rules.

(b) To determine, in light of the evidence adduced under the foregoing issue, whether Jack E. Ondracek possesses the requisite qualifications to be or remain licensee of the captioned radio station.

4. IT IS FURTHER ORDERED, That the Chief, Mass Media Bureau, is directed to serve upon Jack E. Ondracek, within thirty (30) days of the release of this Order, a Bill of Particulars with respect to Issues (a) and (b) above.

5. IT IS FURTHER ORDERED, That pursuant to Section 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding with the evidence and the burden of proof shall be upon the Mass Media Bureau as to both issues.

6. IT IS FURTHER ORDERED, That to avail itself of the opportunity to be heard, the licensee, pursuant to Section 1.91(c) of the Commission's Rules, in person or by attorney, shall file with the Commission within thirty (30) days of the receipt of the Order to Show Cause a written appearance stating that it will appear at the hearing and present evidence on the matters specified in the Order. If the licensee fails to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty (30) days of the receipt of the Order to Show Cause. *See* Section 1.92(a) of the Commission's Rules. In the event the right to a hearing is waived, the presiding officer, or the Chief Administrative Law Judge if no presiding officer has been designated, will terminate the hearing proceeding and certify the case to the Commission in the regular course of business and an appropriate Order will be entered. *See* Section 1.92(c) and (d) of the Commission's Rules.

7. IT IS FURTHER ORDERED, That if it is determined that the hearing record does not warrant an Order revoking the license for Station KRGL(AM), Myrtle Creek, OR, it shall be determined, pursuant to Section 503(b) of the Communications Act of 1934, as amended, whether an ORDER FOR FORFEITURE shall be issued against Jack E. Ondracek in an amount not exceeding twenty thousand dollars ($20,000.00) for the willful and repeated violation of Sections 73.1740 and/or 73.1750 of the Commission's Rules.

8. IT IS FURTHER ORDERED, That this document constitutes a NOTICE OF APPARENT LIABILITY for willful or repeated violation of Sections 73.1740 and/or 73.1750 of the Commission's Rules. The Commission has determined that in every case designated for hearing involving the potential revocation of a station license, it shall, as a matter of course, include a forfeiture notice so as to maintain the fullest possible flexibility of action. Since the practice of including such forfeiture notice is a routine procedure, such inclusion herein should not be viewed in any manner as suggesting or otherwise indicating what the initial or final disposition of this proceeding should be.

9. IT IS FURTHER ORDERED, That the Secretary, send a copy of this Order by *Certified Mail - Return Receipt Requested*, to:

Jack E. Ondracek
Radio Station KRGL(AM)
P.O. Box 6001
Myrtle Creek, OR 97457

FEDERAL COMMUNICATIONS COMMISSION

Donna A. Searcy
Secretary

FOOTNOTES

[1] Section 1.5 of the Commission's Rules requires that the licensee keep the Commission informed of any change in its mailing address.

[2] Section 73.1740(a)(4) provides:

> In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

Section 73.1750 provides:

> The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C. for cancellation.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

SIMMONS SATELLITE, LTD. (d/b/a Bonneville Satellite Communications) — File No. I-T-C-88-206

For Blanket Authority to Make Available Channels of Communication Between the U.S. and Various Transborder Locations via Domestic Satellite Systems Consulted Pursuant to Article XIV(d) of the INTELSAT Agreement and the Morelos System

SIMMONS SATELLITE, LTD. (d/b/a Bonneville Satellite Communications) — File Nos. CSG-89-004-ML, CSG-89-005-ML, CSG-89-006-ML

Applications to modify existing licenses for domestic earth stations located at Alexandria, Virginia (E6087), Hollywood California (E859951) and San Diego, California (E3321) to communicate with all U.S. domestic satellites and the Mexican Morelos satellite to provide transborder service

REUTERS INFORMATION SERVICES, INC. — File No. CSG-88-102-ML

Application for modification of its domestic VSAT network to establish channels of communications to Canada via the GSTAR II satellite

IDB COMMUNICATIONS GROUP, INC. — File No. CSG-88-067-ML

Application to use its domestic transmit/receive earth station at Staten Island, New York to communicate with the Canadian ANIK satellites and all U.S. domestic satellites to provide transborder service between the U.S. and Canada

OVERSEAS TELECOMMUNICATIONS, INC. — File No. CSG-89-007-ML

Application for authority to use two domestic transmit/receive earth stations at Redlands, California to communicate with all Ku-band U.S. domestic satellites and the ANIK and Morelos satellites to provide transborder service

ORDER AND AUTHORIZATION

Adopted: December 30, 1988; Released: January 25, 1989

By the Chief, International Facilities Division:

1. The captioned applications request authority under Title III and Section 214 of the Communications Act of 1934, as amended, to modify existing domestic earth station facilities and to make available channels of communication to provide transborder service to various locations. The applications were placed on the Commission's public notice. Satellite Transmission and Reception Services (STARS) filed comments in response to the application of Reuters Information Services, Inc.

2. *Simmons Satellite, Ltd. d/b/a Bonneville Satellite Communications* (Simmons) - File Nos. I-T-C-88-206; CSG-89-004-ML; CSG-89-005-ML; and CSG-89-006-ML. In application file No. I-T-C-88-206 Simmons requests authority to make available channels of communication between the U.S. and various transborder locations via domestic satellite systems consulted pursuant to Article XIV(d) of the INTELSAT Agreement, including the Mexican Morelos satellites. However, Simmons immediate concern is to use its uplink facilities in San Diego, California and Alexandria, Virginia, as well as other uplink facilities it leases, to provide service to Mexico via the Spacenet I satellite pursuant to a private contractual agreement.

3. In applications File Nos. CSG-89-004-ML, CSG-89-005-ML and CSG-89-006-ML Simmons requests authority to modify its existing domestic earth station licenses for its Alexandria, Virginia, (call sign E6087) Hollywood, California (call sign E859951) and San Diego, California (call sign E3321) facilities to add all U.S. domestic satellites and the Mexican Morelos satellites as points of communication in order to provide transborder service to various transborder locations.

4. *IDB Communications Group, Inc.* (IDB) - File No. CSG-88-067-ML. IDB is a common carrier providing both domestic and international service and is the licensee of several domestic and international earth station facilities. In the instant application, IDB requests authority to use its Staten Island, New York transmit/receive earth station to communicate with the Canadian ANIK satellites, as well as all U.S. domestic satellites, to provide transborder service between the U.S. and Canada.[1] IDB has previously been authorized to provide transborder service between the U.S. and Canada using several of its licensed domestic earth stations.

5. *Reuters Information Services, Inc.* (Reuters) - File No. CSG-88-102-ML. Reuters is a news service organization which currently operates private earth station facilities for

domestic and transborder distribution of its services. Reuters has filed an application to construct a private satellite earth station (VSAT) network to operate in the 12/14 GHz band. The network will use the GTE Spacenet domestic satellite system to provide high speed voice data and video services. As part of its application to establish its private network, Reuters requests authority to establish channels of communication to Canada via the GSTAR II satellite.

6. *Overseas Telecommunications, Inc. (OTI)* - File No. CSG-89-007-ML. OTI is an international common carrier authorized to provide digital private line voice, data and video services and international television service to international points served by INTELSAT. OTI has also been authorized to provide two-way audio, video and business transborder services between the U.S. on the one hand, and Canada and Mexico on the other hand, via U.S. domestic satellites and the ANIK and Morelos satellites consulted under Article XIV(d) of the INTELSAT Agreement.[2] In the instant application, OTI requests authority to use two domestic transmit/receive earth stations (4.6 and 2.4 meters) to be constructed at Redlands, California to communicate with all domestic Ku-band satellites in the arc from 145 to 180 degrees W.L., as well as the Canadian ANIK and Mexican Morelos satellites consulted under Article XIV(d) of the INTELSAT Agreement to provide transborder service.

7. STARS filed comments in response to the Reuters application. STARS states that any grant of the Reuters application should be conditioned to preclude the operation of the earth stations with the INTELSAT system. STARS argues that the Commission does not have the authority to grant applications to non-carriers, including Reuters, to own and operate INTELSAT earth stations. STARS has advanced the same argument in a brief filed with the U.S. Court of Appeals for the District of Columbia Circuit in Case Nos. 88-1357 and 88-1358.

8. Upon review of the subject applications, we find that their grant is consistent with the Commission's Transborder policy, which permits the use of domestic satellites to provide certain international public telecommunications services. These applications are similar to those applications previously authorized by the Commission. [3] We incorporate our findings in those previous transborder decisions and note here that all of the applicants have previously been authorized to provide transborder service similar to that requested herein. Thus, it appears that, for the most part, the applicants are adding additional earth stations to provide transborder services previously authorized. In view of these circumstances, we find that the public interest will be served by a grant of the subject applications. We must note however, that although some of the applications request authority to use all U.S. domestic satellites to provide transborder service, not all U.S. domestic satellites have been consulted under Article XIV(d) of the INTELSAT Agreement. Thus, the grant of final authority for both the satellites and services requested in the subject applications is conditioned on compliance with Attachments 1 and 2.

9. Finally, our authorization of Reuters to use its private network to provide transborder services does not involve use of the INTELSAT system. Since the court case cited by STARS involves the issue of whether the Commission can license non-common carrier transmit/receive earth stations to operate with the INTELSAT system, it does not affect the instant Reuters' application.

10. Accordingly, IT IS ORDERED that the applications of Simmons Satellite, Ltd. (File Nos. I-T-C-88-206; CSG-89-004-ML, CSG-89-005-ML and CSG-89-006-ML); Reuters Information Services, Inc. (File No. CSG-88-102-ML); IDB Communications Group, Inc. (File No. CSG-88-067-ML) and Overseas Telecommunications, Inc. (File No. CSG-89-007-ML) ARE GRANTED and the applicants are authorized to provide the transborder services requested in their applications and consistent with Attachments 1 and 2.

11. IT IS FURTHER ORDERED that IDB's temporary authority to use its Staten Island, New York earth station for transborder service is hereby cancelled and superseded. However, the continuing effectiveness of this authorization is contingent on IDB's underlying authority to operate this station for domestic purposes.

12. This authorization constitutes the final step for the provision of transborder services through domestic satellites only insofar as the U.S. regulatory process is concerned. It does not, however, dispense with any requirements that may be imposed by the other countries involved.

13. This order shall not be construed as authorizing the distribution of programming where the appropriate copyright clearances have not been obtained.

14. This order is issued under Section 0.291 of the Commission's Rules on Delegations of Authority and is subject to review under Section 1.115 of the Commission's rules on practice and procedure. Review by the full Commission may be requested within 30 days of the date of public notice of this order (*see* Commission Rule 1.4(b)(2)) by writing Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration and, if mailed, should be sent by certified mail in time to be received by the due date.

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] This earth station is currently operating pursuant to a grant of temporary authority for both domestic and transborder service.

[2] The domestic portion of this application was granted on December 9, 1988.

[3] *See* Transborder Satellite Video Services, 88 FCC 2d 258 (1981). For a more complete list of the Commission's transborder decisions, *see* note 5 in Overseas Telecommunications, Inc. et al., 2 FCC Rcd 5438 (1987).

ATTACHMENT 1

U.S. Satellites Consulted Pursuant to Article XIV(d)

Satellites

*FEDEX A
*FEDEX B
GALAXY I
*GALAXY II
GALAXY III
*GALAXY IV
*GALAXY B
GSTAR I
GSTAR II
*GSTAR III
*COMSTAR III
COMSTAR D-4
*COMSAT GEN B
SPACENET I
*SPACENET II
SPACENET III
SATCOM IR
*SATCOM IIR
SATCOM IIIR
SATCOM IV
SATCOM V
SATCOM K-1
*SATCOM K-2
SBS V
SBS I
SBS II
SBS III
**SBS IV
TELSTAR 3A
TELSTAR 302
*TELSTAR 303
CONTEL ASC-I
CONTEL ASC-II
WESTAR IV
WESTAR V
*WESTAR B
*WESTAR (79° W)

* Consulted for Latin America/Caribbean services only. Includes receive-only video programming from the U.S. to Mexico.

** Consulted for Canada and Latin America/Caribbean services only.

ATTACHMENT 2

SUMMARY OF INTELSAT CONSULTATION

Country	Service[s]	Satellite[s]
Anguilla	T.V. and audio receive-only	all Comstar, Satcom, Westar and Galaxy satellites listed in Attachment 1
Antigua and Barbuda	T.V., audio and data receive-only	all satellites listed in Attachment 1
Bahamas	T.V., audio and data receive-only	all satellites listed in Attachment 1
Barbados	T.V. receive-only	all Galaxy, Satcom and Westar satellites listed in Attachment 1
Belize	T.V., audio and data receive-only	all satellites listed in Attachment 1
Bermuda	T.V. and audio receive-only	all Comstar, Satcom, Westar and Galaxy satellites listed in Attachment 1
British Virgin Islands	T.V. and audio receive-only	all Comstar, Satcom, Westar and Galaxy satellites listed in Attachment 1
Canada	occasional pt.-to-pt. and full time video services and business services (including data and electronic document distribution, video teleconferencing and voice communications)	all satellites listed in Attachment 1 plus ANIK B, C1, C2, C3, D1 and D2
Cayman Islands	T.V. and audio receive-only	all Comstar, Satcom, Westar and Galaxy satellites listed in Attachment 1

Colombia	T.V. receive-only	Galaxy I and III, Satcom IR, IIIR, IV and V, Westar IV, Westar V and Westar (269E)
Costa Rica	T.V. receive-only	all satellites listed in Attachment 1
Dominica	T.V., audio and data receive-only	all satellites listed in Attachment 1
Dominican Republic	T.V., audio and data receive-only	all satellites listed in Attachment 1
El Salvador	T.V. receive-only	all satellites listed in Attachment 1
Grenada	T.V., audio and data receive-only	all satellites listed in Attachment 1
Guatemala	T.V. and audio receive-only	all satellites listed in Attachment 1
Haiti	T.V., audio and data receive-only	all satellites listed in Attachment 1
Honduras	T.V. receive-only	all satellites listed in Attachment 1
Jamaica	T.V., audio and data receive-only (See note 3)	all satellites listed in Attachment 1
Mexico	Full-time and occasional T.V. services, receive-only audio and business services (including data and electronic document distribution, video teleconferencing and voice communications)	all satellites listed in Attachment 1 plus the Morelos I and II satellites
Monsterrat	T.V., and audio receive-only	all Comstar, Satcom, Westar and Galaxy satellites listed in Attachment 1
Netherlands Antilles	T.V. receive-only	Galaxy I, Satcom III-R and IV,

		Westar IV and V and Comstar D4
Panama	T.V., audio and data receive-only	all satellites listed in Attachment 1
St. Christopher-Nevis	T.V., audio and data receive-only	all satellites listed in Attachment 1
St. Lucia	T.V., audio and data receive-only	all satellites listed in Attachment 1
St. Vincent and the Grenadines	T.V., audio and data receive-only	all satellites listed in Attachment 1
Trinidad and Tobago	T.V. receive-only	all Galaxy, Satcom, Westar and Comstar satellites listed in Attachment 1
Turks & Caicos	T.V. and audio receive-only	all Comstar, Satcom, Westar and Galaxy satellites listed in Attachment 1
Venezuela	T.V. receive-only	all satellites listed in Attachment 1

Notes

1) With the exception of Mexico and Canada, which were consulted separately, all services (i.e. T.V., audio and data receive-only) can be provided to any point over any of the satellites listed in Attachment 1 even through only certain services and satellites were initially requested. This can be accomplished through notifying INTELSAT with no additional consultation required.

2) Attachment 1 contains only those satellites that have been technically consulted with INTELSAT.

3) All services authorized to Latin American/Caribbean locations are receive-only (i.e. can be received as a by-product of or incidental to U.S. domestic transmissions).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 85-205

In re Applications of

BURWOOD BROADCASTING OF MEMPHIS, LTD. — File No. BPCT-841127KF

EAM BROADCASTING CO. OF MEMPHIS — File No. BPCT-850108KZ

For a Construction Permit for a New Television Station on Channel 50 Memphis, Tennessee

MEMORANDUM OPINION AND ORDER

Adopted: January 11, 1989; Released: January 27, 1989

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN.

1. The Review Board has under consideration a Joint Petition filed August 30, 1988 by Burwood Broadcasting of Memphis, Ltd. and EAM Broadcasting Co. of Memphis requesting that their respective applications for authority to construct and operate a new commercial television station at Memphis, Tennessee on Channel 50 be returned to active status.[1] By earlier *Order*, 2 FCC Rcd 7018 (Rev. Bd. 1987), we had dismissed both applications and granted the mutually exclusive application of Kyles Broadcasting, Ltd., pursuant to a settlement agreement between all of the parties. Petitioners now argue that, under the terms of the Board-approved settlement agreement, the dismissal of their applications was to be effective only upon payment from Kyles to petitioners on or before the 60th day after the Board's *Order* became "'final' or no longer subject to administrative or judicial review or reconsideration." Petitioners assert that, to date, Kyles has not made full payment to petitioners, and they contend that reinstatement of their applications, accompanied by recission of Kyles' Construction Permit, is consistent with controlling precedent, citing *Banks Broadcasting Co., Inc.*, 60 RR 2d 1450 (1986). After receiving two extensions of time to respond to a Petition for Reinstatement (*see* note 1), Kyles filed an opposition to the instant Joint Petition on November 25, 1988; petitioners filed a Reply on December 7, 1988.

2. We will dismiss the Joint Petition for want of jurisdiction. The Board's authority to hear and decide cases is confined by Sections 0.361-0.365 of the Commission's Rules, 47 CFR §0.361-0.365. Those rules empower the Board to act on exceptions to initial and summary decisions and appeals from other rulings of Administrative Law Judges pursuant to Sections 1.301 and 1.302 of the Rules, 47 CFR §1.301 and 1.302. Thereafter, the Board's jurisdiction ceases, subject only to the parties' rights to seek reconsideration within 30 days. *See* Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. §405; *see also Leflore - Dixie Employee Venture*, FCC 83R-90, released November 8, 1983 (untimely petition to terminate interim operation and authorize new interim licensee dismissed for lack of jurisdiction).[2] Here, our *Order* approving the settlement and terminating the proceeding was released November 23, 1987. No petition for reconsideration was timely sought, nor did we act on our own motion to set aside the *Order* (*see* note 2). Insofar as petitioners argue that, by approving the settlement agreement, the Board implicitly retained jurisdiction over the proceeding and postponed dismissal of the applications until a later date, this is plainly erroneous. The Board's dual actions of dismissing Joint Petitioners' applications and granting Kyle's were unconditional; and petitioners cannot, by virtue of a captive provision in their own agreement, enlarge the Board's jurisdictional reach.

3. Further, reliance on *Banks Broadcasting Co., Inc.*, for authority for reinstatement of the applications is misplaced. In *Banks*, a comparative renewal case involving two licensees and two competing applicants, the Commission, pursuant to a settlement agreement, granted the implicated renewal applications *expressly* subject to assignment of the licenses, and it *explicitly* conditioned dismissal of the two competing applications upon the conclusion of the assignment applications. Unlike here, Commission jurisdiction over the applications involved in the *Banks* settlement was purposely retained, pending formal action on the assignment applications.

4. Finally, even if the Board had jurisdiction to decide the merits of the Joint Petition, it would encounter the well-established Commission policy that "[a]ny breach of [a settlement] Agreement's provision for payment [is] a matter for the parties to resolve in the local courts." *Priscilla L. Schwier*, FCC 88I-094, released September 22, 1988, n.2; *see also McAlister Television Enterprises, Inc.*, 60 RR 2d 1379, 1383-1384 (1986)(Commission does not assume jurisdiction in contractual controversies involving broadcast licensees, recognizing that such matters are generally private in nature and appropriately left to local courts for resolution).

5. ACCORDINGLY, IT IS ORDERED, That the petition for reinstatement of construction permit applications filed August 30, 1988 by Burwood Broadcasting of Memphis, Ltd and EAM Broadcasting Co. of Memphis IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

FOOTNOTES

[1] Based on repeated representations by counsel, up through and including January 1, 1989, that payment to petitioners was anticipated, thereby mooting the Joint Petition, the Board has stayed its hand. *See* Kyles Broadcasting, Ltd.'s motions for extension of time filed September 22 and October 28, 1988, respectively, and its opposition filed November 25, 1988.

[2] Section 405 bars the agency from acting on petitions for reconsideration filed beyond the statutory 30-day period. *See Reuters Ltd. v.* FCC, 781 F.2d 946, 952 (D.C. Cir. 1986); *see also National Black Media Coalition v. FCC*, 760 F.2d 1297, 1298 (D.C. Cir. 1985)(construing 47 U.S.C. §402 governing appellate jurisdiction: "The [30 days] time limitation is jurisdictional).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-440

In re Applications of

EVANGEL COMMUNICATIONS, INC.	File No. BPCT-860410KN
ACHERNAR BROADCASTING COMPANY	File No. BPCT-860410KP
LINDSAY TELEVISION, INC.	File No. BPCT-860410KQ

For Construction Permit for a
New Television Station
Charlottesville, Virginia

ORDER

Adopted: January 11, 1989; Released: January 27, 1989

By the Review Board: MARINO (Chairman), BLUMENTHAL, ESBENSEN.

1. In an *Initial Decision* (*I.D.*), 3 FCC Rcd 5421 (1988), presiding Administrative Law Judge Chachkin (ALJ) found Achernar Broadcasting Company basically unqualified under the following issue:

> To determine whether there is a reasonable possibility that operation by Achernar as proposed would result in objectionable interference to the conduct of radio astronomy activities by the National Radio Astronomy Observatory ["NRAO"] in the West Virginia "Quiet Zone."

2. Achernar has excepted to its disqualification, claiming that "[t]he most critical error in its trial was the ALJ's refusal to consider the fact that *any* grant on Channel 64 precludes its radio astronomy use under NRAO's interference criteria." Achernar Br. at 7 (emphasis added). It further claimed that "the level of interference deemed intolerable by NRAO is so low that *any* use of Channel 64 in Charlottesville from *any* site would *preclude* its radio astronomy use." *Id.*, at 22 (emphases added). Achernar elaborates that since Lindsay Television, Inc., the prevailing applicant below, would transmit on Channel 64 from slightly outside the "Quiet Zone," whereas Achernar would transmit from inside that zone, "the *same* interference would result from any grant," *id.* at 7, because both proposals would essentially render Channel 64 equally "unuseable" to NRAO for purposes of astronomical observation. *Id.*, at 10.[1] In support of this contention at hearing, Achernar proffered "Worknotes Regarding Power Densities of All Three Applicants," prepared by its engineering consultant John J. Mullaney. *See* Achernar Exhibit 6. Whereas the ALJ rejected that exhibit as irrelevant to resolution of the "Quiet Zone" issue, he accepted it as an offer of proof, and permitted Mullaney to be cross-examined on its substantive contents. Tr. 389; *see also I.D.* at n.12.

3. Upon reviewing the exceptions and replies, and after hearing oral argument on January 6, 1989, the Board finds that it would aid its deliberations to have the parties' further views (including those of the Mass Media Bureau, which is a party to this case) with respect to the accuracy of Achernar Exhibit 6 and to Achernar's deductive representations that purportedly derive therefrom. *See generally Valley Broadcasters, Inc.*, FCC 88-366, released November 21, 1988, paras. 4, 13-15. Computational inaccuracies, if any, in the exhibit should be pointed out and corrective information supplied, along with any affidavits in support thereof.

4. ACCORDINGLY, IT IS ORDERED, That Achernar Broadcasting Company IS DIRECTED to file comments as herein described within ten (10) days of the release date of this Order; that Lindsay Television, Inc., the National Radio Astronomy Observatory, and the Mass Media Bureau[2] ARE DIRECTED to file their responsive comments within ten (10) days of the date Achernar's comments are filed; and that Achernar may file reply comments within five (5) days of the date the responsive comments are filed.

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

FOOTNOTES

[1] At oral argument, however, Achernar counsel qualified her use of the term " *same interference*, " saying "same" was intended in a relative sense. Tr. of Oral Arg. of January 6, 1989 at 1182.

[2] Evangel Communications, Inc., the lead applicant in the caption, was disqualified by the ALJ and has not filed exceptions to the denial of its application. Therefore, its application is dismissed for failure to prosecute, 47 CFR §1.276(f), and it is not afforded an opportunity to file comments.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-244

In re Applications of

REBECCA RADIO OF MARCO	File No. BPH-8507110B
EMERALD SEA BROADCASTING, INC.	File No. BPH-850712OF
AFFIRMATIVE BROADCASTING CORPORATION	File No. BPH-850712TX
SHOWCASE COMMUNICATIONS, INC.	File No. BPH-850712UB
MARCO MINORITY ASSOCIATES	File No. BPH-850712UA
SUSAN G. & WILLIAM R. GASTON	File No. BPH-850712UE
MARCO SKYWAVE, INC.	File No. BPH-850712UH

For Construction Permit for a
New FM Station on Channel 224A
in Marco, Florida

MEMORANDUM OPINION AND ORDER

Adopted: December 23, 1988; Released: January 19, 1989

By the Commission: Commissioner Quello dissenting and issuing a statement.

I. BACKGROUND

1. By *Hearing Designation Order*, 2 FCC Rcd 4052 (1987), 17 mutually exclusive applications were designated for hearing. Only seven applicants remain. Before evidentiary hearings began, the remaining seven applicants filed a Joint Request for Approval of Settlement Agreements and Petition for Leave to Amend, which the Administrative Law Judge (ALJ) denied. *Rebecca Radio of Marco*, FCC 88M-1557 (May 24, 1988).

2. The proposed settlement agreements provide that Rowland Gulf Radio, Inc., which is not a party to this proceeding, will be substituted for Affirmative Broadcasting Corporation, that Rowland will pay Affirmative to amend its application to substitute Rowland as the applicant, that Rowland will pay each of the six competing applicants to dismiss their applications, that Affirmative's amended application will be granted, and that Rowland (as the substituted applicant) will receive a construction permit for a new FM station on channel 224A in Marco, Florida. Under the settlement agreement, none of the above-captioned applicants will have an ownership interest in Rowland.

3. The ALJ initially refused to certify this matter to the Commission because he concluded that the settlement agreement could not be approved under Commission precedent. *Rebecca Radio*, FCC 88M-1557 at n.10. However, the Board subsequently "exhort[ed] the ALJ to certify to the full Commission the question of whether such settlements are lawful or serve the public interest." *Rebecca Radio*, FCC 88R-36 at ¶ 4 (June 28, 1988), 3 FCC Rcd, ¶ 4 (1988) (Board denied on procedural grounds Joint Petition for Extraordinary Relief and Joint Request for Stay).

4. In deference to the Review Board's suggestion, the ALJ granted the parties' Joint Request that they be permitted to appeal the ALJ's May 24, 1988 ruling denying the settlement agreements. *Rebecca Radio*, FCC 88M-2088 ¶ 3 (July 6, 1988). This permitted the Board to certify the settlement agreements and related pleadings[1] to the full Commission on July 13, 1988. *Rebecca Radio*, FCC 88R-42 (July 13, 1988), 3 FCC Rcd, ¶ 2 (1988). Thus, the question before us is whether we may approve a settlement agreement providing for the award of a construction permit to an entity wholly owned by non-parties. On November 23, 1988, Marco Minority Associates filed a Request for Expedited Action, which notes that the settlement agreements permit the parties to terminate the agreements in the absence of final Commission approval by December 24, 1988. In view of our action herein, the Request for Expedited Action is granted.

5. We will accept the amendment substituting Rowland for Affirmative Broadcasting as the applicant; approve the settlement agreements between Rowland and each of the seven other applicants; grant a construction permit to Affirmative (as amended to substitute Rowland); and dismiss the competing applications filed by Rebecca Radio, Emerald Sea Broadcasting, Showcase Communications, Marco Minority Associates, Susan & William Gaston, and Marco Skywave. For the reasons that follow, we find that approval of the settlement agreements will, consistent with the provisions of section 311(c) of the Communications Act, 47 U.S.C. § 311(c), and section 73.3525 of the Commission's rules, 47 C.F.R. § 73.3525, serve the public interest by expeditiously providing a new FM service to Marco, Florida, and by conserving the resources of the Commission and of the parties.

II. SETTLEMENT AGREEMENTS

6. This proceeding began in July 1985, when 17 mutually exclusive applications for a new FM station in Marco were filed. When the Commission designated these applications for hearing on the standard comparative issue, it specified air hazard issues against Emerald Sea, Minority, Gaston, and three other applicants that later dismissed their applications. *Hearing Designation Order*, 2 FCC Rcd at 4055 ¶ 16. The ALJ subsequently added site availability issues against Skywave and Showcase.[2] No character issues were ever specified against any of the seven applicants whose applications are pending before the Commission.

7. After a flurry of petitions to enlarge and other prehearing discovery motions, the parties tried to settle this case. Extensive settlement negotiations were conducted over the course of several months, but the parties were unable to reach a universal agreement. As a result of these efforts, it became clear that none of the parties had sufficient financial resources to compensate all of the competing applicants. The Mass Media Bureau participated in the settlement negotiations, and it fully supports the proposed resolution of this adjudicatory proceeding. Having failed to settle the proceeding in the usual manner, the parties believe that the proposed settlement, whereby Affirmative amends its application to substitute Rowland as the applicant, Rowland compensates the other applicants for the dismissal of their applications, and Rowland receives the construction permit, is the only way to resolve this proceeding without protracted litigation.

8. In order to approve the proposed settlement agreements under section 311(c)(3) of the Communications Act, we must be able to determine that the agreements are consistent with the public interest, convenience or necessity, and that none of the parties to the agreements filed its applications for the purpose of reaching or carrying out such an agreement. Pursuant to the requirements of section 311(c) of the Communications Act and section 73.3525 of the Commission's rules, the parties submit a copy of the agreement between Affirmative and Rowland. The agreement provides that Rowland will pay Affirmative $230,000 and that Affirmative will file an amendment substituting Rowland as the applicant. The parties also submit copies of the settlement agreements providing that Rowland will pay various sums to Rebecca, Emerald Sea, Showcase, Minority, Gaston, and Skywave in exchange for their agreement to dismiss their applications with prejudice.

9. Each of the above-captioned applicants has filed statements under penalty of perjury certifying that its application was not filed for the purpose of reaching or carrying out a settlement agreement, as section 311(c) of the Act and section 73.3525(a) of the Rules require. The statements under penalty of perjury further explain that approval of the settlement agreements will serve the public interest by expediting broadcast service to Marco and conserving the resources of the Commission and of the parties.

A. *The ALJ's Ruling*

10. The ALJ refused to approve the settlement agreements because he found that the proposal is "contrary to the intent and purpose of Section 311(c) of the Act and of Section 73.3525(a) of the Rules and expressly precluded by *Scott & Davis*." *Rebecca Radio*, FCC 88M-1557 at ¶ 5. In doing so, the ALJ focused first on the fact that the proposed permittee is not a party to this comparative proceeding. The ALJ determined that the Rowland agreement could not be approved under section 311(c) of the Communications Act and section 73.3525 of the Commission's rules, because those provisions contemplate settlement agreements between or among competing applicants. *Rebecca Radio*, FCC 88M-1557 at ¶ 3. However, for the reasons stated below, we reach the opposite conclusion: the fact that the agreement provides that a non-party will be the permittee does not preclude the Commission from approving the agreements under the statute.

11. We conclude that section 311(c) does not prohibit settlement agreements where a third-party receives the construction permit. Section 311(c)(1) provides that "[i]f there are pending before the Commission two or more applications for a permit for construction of a broadcasting station . . . it shall be unlawful, without approval of the Commission, for the applicants . . . to effectuate an agreement whereby one or more of such applicants withdraws his or their application or applications." Section 73.3525(a), similarly provides only that the Commission must approve a settlement agreement "[w]henever applicants for a construction permit . . . enter into an agreement [procuring] the removal of a conflict between applications pending before the Commission. . . ." Thus, the plain language of the statute and the Commission's rules requires only that the Commission approve settlement agreements among competing applicants whereby one or more applicants withdraws its application. Neither section 311(c) of the Act nor section 73.3525(a) explicitly mentions or otherwise precludes third-party participation in such a settlement. The Commission and the court have never construed section 311(c) and section 73.3525 of the Commission's rules to preclude third-party participation in a settlement agreement among competing applicants. Rather, this is a question of first impression.

12. In denying the Joint Request for Approval of Settlement Agreements, the ALJ also relied on *Scott & Davis Enterprises, Inc.*, 54 RR 2d 868 (1983). There, the Commission was faced with a settlement agreement, whereby a construction permit would be awarded to Scott (one of the original applicants), who would immediately assign the construction permit to an entity 10 percent owned by Scott and 90 percent owned by a third-party. Because Scott intended in effect to assign the permit to a third-party, the Commission denied the settlement request as contrary to long-standing Commission precedent that "construction permits are granted 'only to qualified applicants who have . . . [a] bona fide intention to construct their proposed facilities and render a broadcast service.'" *Scott & Davis*, 54 RR 2d at 869 ¶ 4 & n.7 (quoting *Northeast TV Cablevision*, 21 FCC 2d 442, 443 (1970)).

13. In the ALJ's view, the settlement agreements in this case were even more questionable than the arrangement rejected by the Commission in *Scott & Davis* because none of the original applicants for Marco will have an ownership interest in the permittee. *Rebecca Radio*, FCC 88M-1557 at ¶ 4. Accordingly, the ALJ held that the Commission's denial of the proposed settlement in *Scott & Davis* compelled denial of the proposed settlements in this case. *Rebecca Radio*, FCC 88M-1557 at ¶ 4.

14. We do not agree with the ALJ that *Scott & Davis* governs whether we reject the settlement agreements in this case. In *Scott & Davis*, we rejected the settlement agreement because of Scott's stated intent to immediately assign the construction permit to a third-party. Our sole concern in that case was that we not grant a construction permit to an applicant that had expressly stated that it did not intend to construct and operate a station in the public interest. To grant that request would have been contrary to a long line of Commission precedent that construction permits are awarded only to applicants that actually intend to construct a broadcast facility and operate in the public interest.

15. Here, however, we are not asked to grant a construction permit to an applicant who will immediately assign the permit to a third-party. Rather, the proposal

requests that we substitute Rowland for Affirmative and then grant the construction permit to Rowland. Rowland, unlike Scott, does intend to construct and operate the proposed station to serve the public, and does not propose to assign the construction permit to a third party. Because the agreements in this case present a different situation than the one raised in *Scott & Davis*, that case does not support the ALJ's determination to reject the proposed settlement.

B. ***Public Interest Considerations***

16. We conclude that approval of the proposed settlement agreements in this case serves the public interest. As the Commission has previously indicated, the law generally favors settlements as a way of reducing the time, cost, and uncertainty of protracted litigation. *See RKO General, Inc. (KHJ - TV)*, 3 FCC Rcd at, ¶ 12 (1988), and the cases cited therein. *See* also *Spanish International Communications Corp.*, 2 FCC Rcd 3336, 3340 ¶ 27 (1987); *ASD Answer Service, Inc.*, 1 FCC Rcd 753, 754 (1986).

17. Providing new broadcast service to the public in an expeditious manner is an important public interest objective. Resolving initial licensing proceedings by settlement provides even greater public interest benefits than the settlement of a comparative renewal proceeding because it results in the immediate initiation of a new service to the public. *NBC, Inc*, 25 RR 67, 73 ¶ 11 (1963). Avoiding the delay associated with lengthy comparative hearings more than offsets the public interest detriment of not having an array of applicants from which to choose. *Id.* Contested comparative proceedings often are quite time-consuming and expensive to resolve, particularly where, as in this case, numerous applicants are involved. Such proceedings, with the opportunity for administrative and judicial appeals, can delay for years the initiation of new broadcast service to the public. This delay is contrary to the public interest. Therefore, the benefits to the public from settlement are especially large where, as in this case, an agreement is reached before evidentiary hearings have begun.

18. We have received no objection to these agreements, and, as discussed below, the proposed permittee is qualified to be a Commission licensee. Thus, as petitioners urge in the Joint Request, approval of the settlement agreements will expedite the initiation of new service to listeners in and around Marco. By awarding the permit to a qualified applicant ready to begin serving Marco immediately, we can terminate a multi-party comparative proceeding that could prove to be very time consuming and costly for the private parties and the Commission to resolve through litigation. Our decision will conserve the resources of the parties and of the Commission. Because evidentiary hearings have not yet begun, the Commission stands to realize very substantial administrative and financial savings if the proposed agreement is consummated.

19. By entering into settlement agreements with Rowland, the original applicants in this proceeding have, as the Board observed, effectively declared that they are no longer interested in litigating the right to serve Marco. *Rebecca Radio*, 3 FCC Rcd 2256, 2256 ¶ 3 (Rev. Bd. 1988). To proceed with comparative hearings, in the face of an agreement contemplating a grant to a qualified applicant, would be a significant waste of time and resources and would needlessly delay the institution of new service to Marco. Clearly, that would disserve the public interest. [3] *See Allegan County Broadcasting, Inc.*, 83 FCC 2d at 373 ¶ 5; *Western Connecticut Broadcasting Co.*, 88 FCC 2d 1492, 1496-97 ¶ 9 (1981); *Son Broadcasting Inc.*, 92 FCC 2d 450, 451-52 ¶ 2 (Rev. Bd. 1982). By contrast, Rowland has indicated a clear willingness and desire to own and operate this station and to serve the needs and interests of Marco. Under these circumstances, the public interest is best served by putting the station in the hands of the person who has indicated the greatest willingness to serve this community.

C. ***Compliance with Anti - trafficking Rules***

20. The settlement agreements are consistent with our anti-trafficking rules. Section 73.3597 of the Commission rules prohibits licensees from profiting on the sale of a construction permit for an unbuilt station, or a license for a station that has been on the air less than a year. 47 C.F.R. § 73.3597. In the case of the assignment of a construction permit, the permittee may not get more than its legitimate and prudent expenses in prosecuting its application for a construction permit and in placing the station on the air. *See* 47 C.F.R. § 73.3597(c)(2); *Amendment of Section 73. 3597 of the Commission's Rules*, 52 RR 2d 1081, 1086 ¶ 21 (1982), modified, 99 FCC 2d 971 (1985). When an applicant gets a construction permit pursuant to a settlement agreement (rather than pursuant to a comparative grant), the one-year rule set forth in section 73.3597(a) does not apply. *NEWSystems of Pennsylvania*, 2 FCC Rcd 73, 74-75 ¶ 12 (1987). However, even where a construction permit is awarded pursuant to a settlement agreement, the permittee of an unbuilt station is subject to section 73.3597(c)(2), which precludes the permittee from receiving more than its legitimate and prudent expenses.

21. Under the proposed agreements, Rowland will pay $230,000 to Affirmative; $70,000 to Rebecca; $250,000 to Emerald Sea; $200,000 to Showcase; $70,000 to Minority; $200,000 to Gaston; and $35,000 to Skywave. Regardless of whether these amounts represent the legitimate and prudent costs of prosecuting each application, section 73.3597 of our rules does not apply. It has long been Commission policy to permit competing applicants to dismiss their applications for compensation not limited to recovering only legitimate and prudent expenses. *See Agreements in Broadcast Proceedings*, 53 RR 2d 823, 825 ¶ 5 (1983).[4]

22. To date, we have not granted a construction permit for a new FM station on channel 224A in Marco, Florida. Indeed, we have not even begun evidentiary hearings to determine which of the above-captioned applicants would best serve the public interest. Because we have thus not issued a construction permit for channel 224A to any of the applicants in this proceeding, none of the applicants has anything that it can transfer or assign to Rowland. Thus, the applicants clearly are not being compensated for the assignment of a construction permit, within the meaning of section 73.3597(c)(2) of the rules. Rather, Rowland is paying Affirmative to file an amendment substituting Rowland as the applicant, and it is paying the other six applicants to dismiss their applications.

23. Approval of these agreements also does not violate the intent of section 73.3597(c)(2), which the Commission retained "in order to maintain the integrity of the Commission's licensing processes and effectuate the intent of sections 301 and 304 of the |Communications| Act." *Amendment of Section 73. 3597*, 52 RR 2d at 1089 ¶ 30. As the hearings have not begun, neither the parties nor the Commission has invested substantial time or expense

in resolving this proceeding, that would be forfeited by approving the agreements prior to the conclusion of those proceedings. Moreover, the Commission has not granted a construction permit to any of the applicants in this proceeding, based upon promises that will go unfulfilled if the proposed settlement agreement is approved. Thus, the settlement agreements do not compromise the integrity of the Commission's adjudicatory processes.

24. Moreover, before settlement negotiations began, the competing applicants vigorously prosecuted their applications by filing various discovery and pre-hearing motions. These efforts, along with the section 73.3525(a) statements certifying that these applications were not filed for the purposes of entering into a settlement agreement, persuade us that these applicants actually intended to construct and operate on channel 224A when they filed their applications in July 1985. Cf. *NEWSystems*, 2 FCC Rcd at 74 ¶ 10 (Commission relied on affidavits in rejecting the contention that an assignee must have misrepresented its original intentions to the Commission because it could not have developed an intent to reassign station within a space of only two months).

25. Indeed, the original applicants entered into the agreements with Rowland only after several months of negotiations that failed to produce a universal settlement agreement, whereby one applicant would agree to pay all of the competing applicants for withdrawing their applications. Thus, it appears that the third-party agreement with Rowland may be the only way to avoid lengthy comparative hearings that could delay service to the public for years. Approval of the settlement agreements will therefore expedite, rather than delay or disrupt, service to the public. Under these circumstances, we find that the settlement more than adequately preserves the integrity of our licensing processes.

26. The Commission's second reason for retaining the rule against assigning or transferring a construction permit was to effectuate sections 301 and 304 of the Communications Act, which essentially specify that the grant of a construction permit or a license confers no ownership rights in the frequency. However, approval of the settlement agreements does not undermine those statutory provisions, inasmuch as Rowland is not paying any of the original applicants for the assignment of a construction permit. Thus, denial of the settlement agreement is not necessary to effectuate these statutory prohibitions.

27. From a public interest standpoint, we discern no meaningful distinction between this settlement and ordinary settlement agreements among competing applicants, which are routinely granted, where one applicant gets a construction permit after paying competing applicants to dismiss their applications. Thus, we find that, as long as the ultimate permittee is qualified, a settlement agreement that expedites the initiation of new broadcast service serves the public interest, regardless of whether the entity compensating the dismissing applicants is a party to the comparative proceeding. To this end, we find that permitting Rowland to compensate the dismissing applicants without regard to whether the amounts paid exceed their legitimate and prudent expenses is consistent with the public interest.

III. ROWLAND'S BASIC QUALIFICATIONS

28. We find that Rowland is fully qualified to be a Commission licensee. Attached to the Joint Request is a revised FCC Form 301 setting forth Rowland's qualifications to be a Commission licensee. There, Rowland adopts Affirmative's technical proposal in order to facilitate its substitution as the applicant for channel 224A in Marco. There is no question as to whether Affirmative has the basic qualifications to be a Commission licensee. When the Commission designated Affirmative's application for consolidated hearing with the mutually exclusive applications, it found that Affirmative had the basic qualifications to be a Commission licensee. Thus, it specified the standard comparative issue, but no basic qualifying issue, against Affirmative. *Hearing Designation Order*, 3 FCC Rcd at 4055 ¶¶ 15-16 ([e]xcept as may be indicated by issues specified below, the applicants are qualified to construct and operate as proposed).

29. The Bureau has reviewed the revised FCC Form 301, and, at its suggestion, the parties published local notice of Rowland's substitution in the *Naples Daily Times* on March 28, 29 and April 4, 5. The local notice advised that Rowland is the proposed permittee of channel 224A in Marco, and that it has adopted Affirmative's technical proposal. Moreover, to the extent that Rowland already controls the licensees of four broadcast stations (and its applications have been challenged only on technical grounds), its previous fitness to be a Commission licensee is a matter of Commission record.

30. Based upon its review of the revised FCC Form 301 setting forth Rowland's basic qualifications to operate a new FM station on channel 224A, the Bureau states that Rowland has the basic and financial qualifications to be a Commission licensee, and that, pending expiration of the public comment period, it supports the proposed settlement. *See* Mass Media Bureau's Consolidated Comments, filed on April 11, 1988, at 4-5 ¶ 5. Having received no comment questioning Rowland's basic qualifications or otherwise objecting to the substitution of Rowland for Affirmative during the 30-day period period for public comment that ended on May 5, 1988, we conclude that Rowland is qualified to be a Commission licensee.

IV. PETITION FOR LEAVE TO AMEND

31. Affirmative seeks permission to amend its application to substitute Rowland as the applicant for a new FM station on channel 224A in Marco, Florida. We find that the amendment is supported by good cause, and that its acceptance will serve the public interest by expediting service to Marco.

32. *New File Number* : Notwithstanding the ALJ's suggestion (*Rebecca Radio*, FCC 88M-1557 at n.9), the amendment substituting Rowland for Affirmative does not require that a new file number be assigned to Affirmative's amended application under 47 C.F.R. § 73.3573(b). Although it is true that section 73.3573(b) of the Commission's rules requires the assignment of a new file number where the original parties to the application do not retain more than 50 percent ownership interest in the application as originally filed, that rule applies only to amendments filed before (not after) a proceeding is designated for hearing. Under Commission precedent, 47 C.F.R. § 73.3522(b) governs post-designation amendments. *Great River Broadcasting, Inc.*, 12 FCC 2d 561, 562-63 ¶ 5 (Rev. Bd. 1968). *See also Chudy Broadcasting Corp.*, 58

RR 2d 133, 134-35 ¶¶ 5-7 (1985); *Gilbert Broadcasting Corp.*, 91 FCC 2d 450, 468 ¶ 56 & n.63 (1982); *California Broadcasting Corp.*, 90 FCC 2d 800, 808 ¶ 17 (1982). In our view, both *Grace Missionary Baptist Church*, 80 FCC 2d 330 (1980), and *Anax Broadcasting, Inc.*, 87 FCC 2d 483 (1981), which *were cited by* the ALJ, are inapposite. *See Rebecca Radio*, FCC 88M-1557 at n.9. *Grace* involved an amendment filed before, not after, designation. In *Anax*, which did involve a post-designation amendment, the Commission found that the post-designation amendment was supported by good cause, as section 73.3522(b), which governs post-designation amendments, requires.

34. *Good Cause* : Section 73.3522(b) of the Commission's rules provides that post-designation amendments must be supported by good cause. We find that, under the circumstances of this case, the post-designation amendment substituting Rowland for Affirmative is supported by good cause, as section 73.3522(b) requires. In order to establish good cause for a post-designation amendment, the moving party generally must demonstrate that it acted with due diligence, that the amendment was not required by a voluntary act of the applicant, that the amendment will not require the addition of parties or issues, that the amendment will not disrupt the hearing, that the other parties will not be unfairly prejudiced, and that petitioner will not gain a competitive advantage as a result of the amendment. *California Broadcasting Corp.*, 90 FCC 2d at 808 ¶ 17 & n.28 (citing *Erwin O' Conner Broadcasting Co.*, 22 FCC 2d 140, 143 ¶ 7 (Rev. Bd. 1970)).

35. These factors are not rigidly applied, however. Rather, we must look to the primary purpose of the good cause requirement of section 73.3522(b), which is to prevent undue disruption of our administrative processes rather than to rigidly stultify our proceedings. *Gross Broadcasting Co.*, 46 RR 2d 1091, 1097-98 ¶ 38 (1979). Accordingly, we have held that the *Erwin O'Conner* test "should be interpreted in light of the equities of the case, especially where . . . a proffered amendment is intended to cure a disqualifying defect." *Anax Broadcasting Inc.*, 87 FCC 2d 483, 488-89 ¶¶ 16-17 (1981). Indeed, the Court of Appeals has admonished that we should not reject a post-designation amendment based solely on our procedural rules, particularly where the amendment cures a defect that would preclude the grant of an application, and there are no competing applicants that will be prejudiced by acceptance of the amendment. *Crosthwait v. FCC*, 584 F.2d 550, 555-56 (D.C. Cir. 1978). In this case, there is no defect precluding grant of any of the pending applications, but accepting the amendment substituting Rowland for Affirmative will permit the immediate grant of a construction permit to Rowland. Furthermore, as in *Crosthwait*, there are no remaining applicants, who could be prejudiced by such action.

36. Nevertheless, we recognize that the proposed amendment substituting Rowland for Affirmative does not meet all of the requirements for good cause set forth in *Erwin O'Conner*. First, the decision to settle this proceeding, rather than litigate the right to operate on channel 224A, was voluntary. Strictly speaking, therefore, the proposed amendment did not result from Affirmative's involuntary act. Second, Rowland is not one of the original applicants in this adjudicatory proceeding. Thus, the amendment introduces a new party into the proceeding. Moreover, the substitution amendment specifies that Rowland adopts Affirmative's engineering proposal. Sections 73.3522(b)(i) and 73.3522(b)(ii) specify additional requirements for amendments to an engineering proposal. Such amendments must be required by unforeseen circumstances and must not require the addition of any new issues or parties. For the reasons discussed above, the settlement agreement does not meet these requirements. However, even in the case of an engineering amendment, the good cause determination is not inflexibly applied. *See California Broadcasting Corp.*, 90 FCC 2d at 810 ¶ 21 (Commission found that a post-designation engineering amendment was supported by good cause even though the amendment required the addition of a shadowing issue).

37. *In accordance with Erwin O'Conner*, the parties have acted diligently in filing the substitution amendment. Once the parties decided to settle this comparative proceeding, they diligently explored the possibility of a settlement that would not involve a third party. They turned to a third-party only after it became apparent that none of the mutually exclusive applicants had sufficient financial resources to compensate all of the competitors. Moreover, the amendment does not require further technical study or the addition of any new issues, because Rowland adopts Affirmative's engineering proposal, and it has the basic and financial qualifications to be a Commission licensee.

38. Thus, by virtue of the agreements between Rowland and each of the dismissing applicants, the amendment actually reduces the total number of parties involved in this proceeding, and eliminates the need for evidentiary hearings. By the same token, the amendment to Affirmative's application will not prejudice the other parties to this proceeding, disrupt the hearing, or give the amending party a comparative advantage. In view of the overall purpose of the good cause requirements, we conclude that the deficiencies set forth in paragraph 36 are not fatal to accepting the amendment. On balance, the equities clearly favor accepting the amendment substituting Rowland for Affirmative. Far from disrupting the Commission's processes, accepting the substitution of Rowland for Affirmative will lead to the speedy conclusion of this proceeding.

39. In view of the substantial public interest benefits of the settlement agreement, we conclude that the Joint Petition for Leave to Amend is supported by good cause, as section 73.3522(b) requires. Thus, we accept the amendment substituting Rowland for Affirmative, approve the settlement agreement, grant Affirmative's amended application for a new FM station on channel 224A in Marco, Florida, and dismiss the six mutually exclusive applications.

V. ORDERS

40. ACCORDINGLY, IT IS ORDERED, That the Joint Request for Approval of Settlement Agreements and Petition for Leave to Amend, filed April 4, 1988, by Rebecca, Minority, Skywave, Showcase, Emerald Sea, Gaston, and Affirmative and the Request for Expedited Action, filed November 23, 1988, by Marco Minority Associates ARE GRANTED; that Affirmative's application IS AMENDED to substitute Rowland Gulf Radio, Inc. as the applicant therein; that the settlement agreements between Rowland and Rebecca, Minority, Skywave, Showcase, Emerald Sea, Gaston, and Affirmative ARE APPROVED; that the applications filed by Rebecca, Minority, Skywave, Showcase,

Emerald Sea, and Gaston ARE DISMISSED; and that Affirmative's amended application (File No. BPH-850712TX) IS GRANTED.

41. IT IS FURTHER ORDERED, That the proceeding in MM Docket No. 87-244 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] These include: (a) Joint Request for Approval of Settlement Agreements and Petition for Leave to Amend, filed April 4, 1988, by Rebecca Radio, Marco Minority Associates, Marco Skywave, Inc., Showcase Communications, Inc., Emerald Sea Broadcasting, William R. and Susan G. Gaston, and Affirmative Broadcasting Corporation; and (b) Consolidated Comments on Joint Request for Approval of Settlement Agreements and Petition for Leave to Amend, filed April 11, 1988, by the Mass Media Bureau.

[2] Because the site availabity issues do not involve character or candor questions, there is no need to inquire further into these matters in the context of any application that either Showcase or Skywave might file in the future. *See Allegan County Broadcasting*, 83 FCC 2d 371, 374 ¶ 7 (1980), where the Commission held that character issues against a withdrawing applicant need not be resolved precisely because such matters could be revisited in future proceedings involving that applicant. Thus, in view of our action herein approving the settlement agreements between Rowland and the remaining applicants, we grant the request of Skywave and Showcase and clarify that this issue need not be explored in future proceedings involving the principals of either applicant.

[3] This case, which is an initial licensing proceeding, is distinguishable from *RKO General, Inc.*, 3 FCC Rcd (1988), where we approved a settlement agreement despite unresolved questions concerning the renewal applicant's basic qualifications. Under *Jefferson Radio Co. v. FCC*, 340 F.2d 781 (D.C. Cir. 1964), a *licensee* generally may not transfer its station to a third party until it has been found to be fully qualified. There is no allegation that any of the applicants in this proceeding lack the basic qualifications to be a Commission licensee. However, even a basic qualifications issue would not bar the settlement agreements in this case inasmuch as there is no impediment in an initial licensing proceeding to an *applicant* with unresolved character questions receiving compensation for the withdrawal of its application. *See Allegan County Broadcasters, Inc.*, 83 FCC 2d 371 (1980). The rationale for the rule in *Jefferson Radio* is deterrence: an unqualified licensee may not profit from its misconduct. We approved the RKO settlement agreement because we found that, under the unusual circumstances of that proceeding, approving the agreement would be fully consistent with the deterrent aspects of the renewal process. 3 FCC Rcd at ¶ 14.

[4] On June 23, 1988, the Commission adopted a Second Further Notice of Inquiry and Notice of Proposed Rule Making that proposes to limit a withdrawing applicant in a *comparative renewal proceeding* from receiving more than its legitimate expenses in return for withdrawing its application. *Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process*, 3 FCC Rcd 5179, 5182 ¶ 19-20 (1988). However, in recognition of differences between comparative renewal proceedings and initial licensing proceedings, the proposed limitation would apply only to dismissing applicants in comparative renewal proceedings. *Id.*

DISSENTING STATEMENT OF COMMISSIONER JAMES H. QUELLO

In re Applications of Rebecca Radio of Marco, *et al.* (MM Docket No. 87-244)

As a general matter, I have always been in favor of settlements in the comparative process as a means of resolving disputes in an expeditious manner. In certain unique circumstances, allowing non parties to participate in the settlement will promote the public interest. *See RKO General, Inc.*, 3 FCC Rcd _____(1988) (settlement with sale to third party promotes public interest by resolving litigation that is over two decades old). However, in our drive to promote settlements and expedite the process, we must be careful not to lose sight of our underlying statutory obligations. The settlement in this case crosses that line, creating dangerous precedent that establishes a *de facto* private auction for broadcast spectrum.

Sections 301 and 304 of the Communications Act make it abundantly clear that broadcast applicants do not have a vested right in the spectrum. Accordingly, it is settled law that the holder of a construction permit cannot profit from the sale of an unbuilt station because the permittee has no property right in the spectrum. *Central Television Inc.*, 60 R.R. 2d 1297 (1986); *See* 47 C.F.R. Sec. 73.3597. Given this time honored communications policy, I find it difficult to understand how the majority could allow an applicant for a new unbuilt broadcast station to sell its application to a third party for profit. Such a policy violates the fundamental principle that broadcast applicants do not have vested rights in the spectrum.

I agree with Administrative Law Judge Joseph Chachkins observation that the parties in this case "seek to utilize a settlement arrangement to circumvent the Commission's established processes for qualifying applicants and awarding construction permits" *Rebecca Radio of Marco*, FCC 88M-1557 (May 24, 1988) at 4. The potential adverse ramifications of this *de facto* private auction on the ability of the Commission to promote local integrated ownership and minority participation through the comparative process may be significant.

The majority's decision in this case is a radical departure from Commission precedent. Because it raised such fundamental issues, I beleive it would have been more appropriate to address the implications of this new policy in the context of a rule making proceeding. Therefore, for the above stated reasons, I must dissent from the decision.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: January 11, 1989

ADVISORY COMMITTEE ON ADVANCED TELEVISION SERVICE IMPLEMENTATION SUBCOMMITTEE

A meeting of the Implementation Subcommittee of the Advisory Committee on Advanced Television Service will be held on:

February 7, 1989
1:00 P.M.
Commission Meeting Room (Room 856)
1919 M Street N.W.
Washington, D.C.

The agenda for the meeting will consist of:

1. Introduction
2. Approval of Minutes of Last Meeting
3. Report of Working Party 1, Policy and Regulation
4. Report of Working Party 2, Transition Scenarios
5. General Discussion
6. Other Business
7. Date and Location of Next Meeting
8. Adjournment

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Implementation Subcommittee Chairman.

Any questions regarding this meeting should be directed to Dr. James J. Tietjen at (609) 734-2237 or David R. Siddall at (202) 632-7792.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-173

In the Matter of

Amendment of Section 73.202(b), RM-6249
Table of Allotments,
FM Broadcast Stations.
(Brandon, Vermont)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 30, 1988; Released: January 27, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 3 FCC Rcd 2402 (1988), issued at the request of James G. Kirkpatrick (petitioner), proposing the allotment of Channel 270A to Brandon, Vermont, as that community's first local FM service. Petitioner filed supporting comments reaffirming his interest in the proposal. No other comments were received.

2. Channel 270A can be allotted to Brandon in compliance with the Commission's minimum distance separation requirements.[1] Since the community is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence has been obtained from the Canadian government.

3. We believe the public interest would be served by the allotment of Channel 270A to Brandon, Vermont, as that community's first local FM service. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 13, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Brandon, Vermont	270A

4. The window period for filing applications will open on **March 14, 1989** and close on **April 13, 1989.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The reference coordinates are 43-47-54 and 73-05-30.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-373

In the Matter of

Amendment of Section 73.202(b), RM-5424
Table of Allotments,
FM Broadcast Stations.
(Cherryvale, Kansas)

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: December 20, 1988; Released: January 27, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the Petition for Reconsideration[1] filed by John E. Hotaling (petitioner) of the Report and Order, 2 FCC Rcd 4228 (1987), which dismissed his petition to allot Channel 263A to Cherryvale, Kansas. The petition was dismissed because the Commission did not receive supporting comments from the petitioner or any other interested party.

2. Petitioner indicates in the petition for reconsideration that he was not aware that notice was given in the Federal Register on October 15, 1986, of the comment dates and, therefore, did not provide comments in support of his petition. Petitioner requested reinstatement of his proposal and indicated he would file a statement expressing his willingness to apply for and construct a station on the requested allotment if the proposal were reinstated.

3. Petitioner has not provided an adequate expression of interest, nor has any other party. Moreover, despite repeated requests from Commission staff, petitioner failed to state a continuing interest in the allotment.

4. In view of the foregoing, IT IS ORDERED, That the petition for reconsideration filed by John E. Hotaling, IS HEREBY DISMISSED.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] Public Notice was given on October 2, 1987, Report No. 1682.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-523

In the Matter of

Amendment of Section 73.202(b), RM-6027
Table of Allotments,
FM Broadcast Stations.
(Vancouver, Washington; Coos Bay
and Corvallis, Oregon)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 13, 1988; Released: January 27, 1989

By the Deputy Chief, Policy and Rules Division:

1. At the request of P-N-P Broadcasting, Inc. (petitioner), the Commission has before it for consideration the *Notice of Proposed Rule Making and Orders to Show Cause*, 2 FCC Rcd 7078 (1987), proposing the allotment of Channel 290C2 to Vancouver, Washington, as a first local FM service. The *Notice* also proposed to substitute Channel 290C2 for Channel 293C2 at Coos Bay, Oregon, and to substitute Channel 292C for Channel 291C at Corvallis, Oregon, in order to accomplish the new allotment at Vancouver. *Orders to Show Cause* were issued to the licensees of Stations KYNG-FM (Channel 293C2) at Coos Bay and KFAT(FM) (Channel 291C) at Corvallis, seeking comments as to why their licenses should not be modified to specify operation on Channel 290C2 and 292C, respectively. Petitioner filed late comments reaffirming its intention to apply for the channel, if allotted.[1] KLOO, Inc. (KLOO), licensee of Station KFAT(FM) at Corvallis submitted a late-filed opposition.[2] Michael T. McKenna (McKenna), also submitted a late-filed opposition to the proposal as well as late-filed counterproposals seeking the allotments of Channel 289A to Port Orford, Oregon, and Channel 292A to Hammond, Oregon.[3] Petitioner and KLOO filed reply comments. SGB Broadcasting, Inc., licensee of Station KYNG-FM at Coos Bay, did not respond to the *Show Cause Order*.

2. KLOO argues that the proposal should be rejected because petitioner failed to present a "substantive showing called for by the Commission in Rule Makings which will affect multiple existing licensees." Citing *FM Channel Assignments*, 59 RR 2d 1184 (1986), KLOO states that the Commission warned of the potential detriment both to licensees and to the public which can result from proposals involving multiple FM channel substitutions. It further argues that the petitioner has ignored the enormous hardship the channel conversion will impose upon KLOO and its listeners. KLOO raises questions as to the petitioner's financial ability to adequately compensate KLOO for substantial expenses associated with the channel change. KLOO contends that the proposed allotment will prevent its radio signal from being interference free to the Portland-Vancouver area. In addition, it argues that Vancouver should be denied a first local FM service because it is already more than adequately served by numerous FM and AM stations in the Vancouver/Portland metropolitan area. In its reply comments, KLOO continues to oppose the proposal.

3. In its reply comments petitioner claims that the allegations made by KLOO against the proposal are irrelevant. Petitioner asserts that the Commission policy requires a substantive showing when "more" than two substitutions of channels occupied by existing FM or TV stations are requested or necessary. Petitioner states that its financial ability to reimburse the stations is not an issue for discussion in the context of this proceeding, since it is the ultimate permittee of the new channel which becomes responsible for such reimbursement. Petitioner further states that the "value of the new allocation at Vancouver will more than justify the cost of reimbursing KLOO and KYNG for their expenses incurred no matter who the eventual permittee is."

4. After careful review of all the information presented in this proceeding, we conclude that the public interest would be served by allotting Channel 290C2 to Vancouver, Washington, as that community's first local FM service. Since SGB Broadcasting, Inc., has not responded to the *Show Cause Order* we deem it to have consented to the modification of its license for Station KYNG-FM. We also find that KLOO's opposition failed to present a valid argument for the denial of the provision of a first local FM service at Vancouver. The issues raised concerning its reimbursement lack merit since the petitioner has stated its willingness to reimburse both stations should it become the eventual permittee of Channel 290C2 at Vancouver. Furthermore, interested parties filing applications for new allotments are required to certify to the Commission that they are financially qualified, and in some circumstances to produce documentation to support the certification. Therefore, the financial qualifications of a prospective applicant are matters for consideration outside of the scope of the rule making proceeding.

5. Additionally, the Commission has long held that service from nearby communities is not a substitute for local service. As to KLOO's argument for interference free service to the Portland-Vancouver area, it is not entitled to protection beyond that provided for by Section 73.209(b) of the Commission's Rules. Its station is afforded protection from interference to the extent provided by the distance separation requirements and the rules governing maximum power and antenna heights. *See Memorandum Opinion and Order*, 50 FR 47391, November 18, 1985. We also must reject KLOO's claim that *Columbus, Nebraska*, 59 RR 2d 1184 (1986), should apply and result in the denial of the proposal. The Commission's policy is not to entertain proposals for changes in the FM Table of Allotments which involve more than two substitutions of channels occupied by existing FM or TV stations other than the substitution for the petitioner's own station, absent a compelling substantive showing in favor of the multiple substitutions. That is not the case here. Thus, we find there is no valid argument against the allotment of Channel 290C2 to Vancouver, Washington.

6. Channel 290C2 can be allotted to Vancouver in compliance with the Commission's minimum distance separation requirements provided the channel substitutions are made at Coos Bay and Corvallis, Oregon.[4] Con-

currence by the Canadian government has been obtained since Vancouver is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

7. As stated in the *Notice* Commission policy requires that the ultimate permittee of Channel 290C2 at Vancouver reimburse Stations KYNG-FM and KFAT(FM) for reasonable costs of changing their facilities. *See Circleville and Columbus, Ohio*, 9 RR 2d 1579 (1967).

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 13, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

City	Channel No.
Coos Bay, Oregon	254C2, 290C2
Corvallis, Oregon	268C, 292C
Vancouver, Washington	290C2

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of SGB Broadcasting, Inc., for Station KYNG-FM, Coos Bay, Oregon, IS MODIFIED, to specify operation on Channel 290C2 in lieu of Channel 293C2, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in License BLH-870219KA except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License BLH-870219KA except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

10. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of KLOO, Inc., for Station KFAT(FM), Corvallis, Oregon, IS MODIFIED, to specify operation on Channel 292C in lieu of Channel 291C, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in License BLH-810511AL except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License BLH-810511AL except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

11. The window period for filing applications on Channel 290C2 at Vancouver, Washington, will open on **March 14, 1989,** and close on **April 13, 1989.**

12. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Order* to: Station KFAT(FM), KLOO, Inc., 1221 South 15th Street, Corvallis, OR 97330 and Station KYNG-FM, SGB Broadcasting, Incorporated 486 E Street, Coos Bay, OR 97420.

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. Questions pertaining to the application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Petitioner's late-filed comments will be accepted for the purpose of permitting a continuing expression of interest in Channel 290C2 at Vancouver. Our general policy is to refuse to accept a late-filed expression of interest, unless the proceeding is uncontested. *See Santa Isabel, Puerto Rico*, 3 FCC Rcd 2336 (1988). Although this proceeding is arguably contested due to the filing of opposition pleadings or counterproposals, we make an exception to the general rule of refusing to accept late-filed expressions of interest where the proceeding may be considered contested due solely to the filing of pleadings or counterproposals that are either procedurally defective or substantively defective for reasons unrelated to their mutual exclusivity with the original rule making proposal. *See Ocilla, Georgia*, 3 FCC Rcd 4765 (1988). Such is the case here. In such situations, the case is analogous to an uncontested case, in that it would serve no useful purpose to first dismiss the rule making proposal and then initiate a new proceeding to address the petitioner's interest in an allotment.

[2] KLOO petitioned for acceptance of its late-filed comments. Although we do not believe KLOO has presented a justifiable reason for such delay, and, therefore, is deemed to have consented to the change, in the interest of fully explaining the public interest benefits of our action we will address KLOO's comments due to the fact that action taken herein will result in the modification of its facilities. We note, however, that we are not required to provide such an explanation, but do so only as a discretionary matter, and that we are not presented with a case in which addressing untimely comments in opposition will adversely affect the outcome sought by other parties to the proceeding.

[3] McKenna attempted to advance his counterproposals after the initial comment period in violation of Section 1.420(d) of the Commission's Rules. Section 1.420(d) sets a "cut-off" date by which competing proposals must be advanced. This "cut-off" procedure is a fundamental procedural cornerstone for the freezing of the record in allotment proceedings, and is critical to the administration of the allotment rule making process. Therefore, absent an extremely compelling showing we will not waive Section 1.420(d). McKenna did not make such a showing. We also note that our acceptance of petitioner's late-filed expression of interest does not constitute unjustifiably disparate treatment of petitioner and McKenna. Petitioner's proposal was on file prior to the cut-off date, unlike McKenna's. Moreover, petitioner filed its expression of interest one day late, on January 20, 1988, while McKenna mailed its counterproposals to the Commission on January 22, 1988, and the proposals were received at the Commission on January 28, 1988. Under such circumstances, were we to dismiss both petitioner's and the counterproposal proponent's request, we would provide an incentive for the filing of untimely counterproposals, because in any case where the petitioner files an untimely expression of interest, another interested party could, at any later time, file an untimely proposal that makes the proceeding "contested." We believe that such a ruling would jeopardize the integrity of the cut-off rule, and frustrate its purpose. Therefore, we shall not consider the counterproposals, and McKenna's opposition will not be further discussed.

[4] The reference coordinates for the allotment of Channel 290C2 at Vancouver are 45-37-30 and 122-40-12. No changes are required in the sites presently used by Stations KYNG-FM and KFAT(FM) at coordinates and 43-21-15; 124-14-31 and 44-38-45; 123-16-13, respectively.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-176

In the Matter of

Amendment of Section 73.202(b), RM-6218
Table of Allotments,
FM Broadcast Stations.
(Albin, Wyoming)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 21, 1988; Released: January 27, 1989

By the Deputy Chief, Policy and Rules Division:

1. At the request of Alton Lewis (petitioner), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 3 FCC Rcd 2508 (1988), proposing the allotment of Channel 296C2 to Albin, Wyoming, as that community's first local FM service. Petitioner filed supporting comments restating his intention to apply for the channel. Randall S. Jacobsen (Jacobsen), licensee of Station KKDD(FM), Channel 296A at Brush, Colorado, filed an engineering statement suggesting the allotment of Channel 297C2 to Albin.[1]

2. In order to resolve the conflict with a separate proposal to substitute Channel 296C1 for Channel 296A at Brush, Colorado, we shall consider Channel 297C2 as an alternative channel at Albin. Channel 297C2 can be allotted to Albin, Wyoming, in compliance with the Commission's minimum distance separation requirements with a site restriction of 23.5 kilometers (14.6 miles) north of Albin in order to avoid a short spacing to the proposal to upgrade Station KKDD(FM), at Brush, Colorado.[2]

3. We believe the public interest would be served by the allotment of Channel 297C2 to Albin, Wyoming, as a first FM service. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 13, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Albin, Wyoming	297C2

4. The window period for filing applications will open on **March 14, 1989,** and close on **April 13, 1989.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The engineering statement also contained a proposal to substitute Channel 296C1 for Channel 296A at Brush, Colorado. The Brush proposal has not been considered as a counterproposal here because the proposal was late-filed in the context of this proceeding and did not contain a certificate of service indicating it was properly served on the petitioner, in violation of Sections 1.420(c) and (d) of the Commission's Rules. However, we shall consider Channel 297C2 as an alternative channel at Albin in order to remove the conflict and permit Jacobsen's proposal to be fully entertained in a separate proceeding. *See* RM-6392.

[2] The coordinates for the restricted site are 41-37-25 and 104-10-36.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 85-376

In the Matter of

Amendment of Section 73.202(b),	RM-4988
Table of Allotments,	RM-5378
FM Broadcast Stations.	
(Ponte Vedra Beach, Florida)[1]	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: December 14, 1988; Released: January 27, 1989

By the Chief, Policy and Rules Division:

1. The Commission has before it a Petition for Reconsideration filed by General Broadcasting of Florida, Inc. (General Broadcasting), licensee of Station WCAT-FM (formerly WHLY), Channel 294C1, Leesburg, Florida directed against the *Report and Order* in this proceeding, 2 FCC Rcd 1182 (1987), which allotted Channel 293A to Ponte Vedra Beach, Florida. Emission de Radio Balmaseda, Inc. (Emission de Radio), an applicant for the Channel 293A allotment at Ponte Vedra Beach, filed an Opposition to Petition for Reconsideration. General Broadcasting filed a Reply to the Opposition, a Motion to Consolidate and a Motion for Stay. Emission de Radio filed an Opposition to the Motion for Stay.[2] We are granting the petition for reconsideration to the extent of substituting Channel 227A in lieu of Channel 293A at Ponte Vedra Beach. We will provide a background and the reasons for this action below.

BACKGROUND

2. This proceeding commenced with the filing of a petition for rule making by Emission de Radio to allot Channel 293A to Ponte Vedra Beach, Florida. In response to the *Notice of Proposed Rule Making* in this proceeding,[3] General Broadcasting filed a counterproposal on February 3, 1986 proposing the allotment of Channel 227A to Ponte Vedra Beach in lieu of Channel 293A. In its counterproposal, General Broadcasting stated that the proposed Channel 293A allotment would preclude grant of its application to maintain full Class C status for Station WCAT-FM (File No. BPH-860310II). While noting that a Channel 227A allotment would require a site restriction south of Ponte Vedra Beach, General Broadcasting argued that the public interest would be better served by full Class C facilities for Station WCAT-FM and a Channel 227A allotment at Ponte Vedra Beach compared to the originally proposed Channel 293A allotment. General Broadcasting also asserted that the captioned community of "Ponte Vedra" in the *Notice of Proposed Rule Making* is not a recognizable community for allotment purposes.

3. The *Report and Order*, released February 20, 1987, rejected this argument and the counterproposal. First of all, the *Report and Order* determined that Ponte Vedra is a recognizable community for allotment purposes. Specifically, it noted that Ponte Vedra is an established Municipal Service District within St. John's County and may be viewed as homogeneous in character and an independent community within St. John's county. However, the *Report and Order* noted that the appropriate appellation in this proceeding is Ponte Vedra Beach. The coordinates and the boundaries are the same. In addition, the *Report and Order* denied the counterproposal advanced by General Broadcasting proposing Channel 227A to Ponte Vedra Beach. The stated reason for that action was that allotting Channel 227A to Ponte Vedra Beach would preclude a Channel 227A allotment to nearby Baldwin, Florida as a first local service.

4. In regard to Baldwin, Florida, there was no Channel 227A proposal for Baldwin before the Commission during this proceeding. Instead, there was pending a petition for rule making by Radio Representatives, Inc. proposing Channel 287A for Baldwin (RM-5213). There was also pending a conflicting petition for rule making filed by Northeast Florida Radio, Inc. proposing Channel 287A to Fernandina Beach, Florida (RM-5133). Neither of these petitions had yet been placed on a Commission Public Notice or had been subject to public comment. Shortly before the February 20, 1987 release of the *Report and Order* in this proceeding, we released on February 6, 1987, the *Notice of Proposed Rule Making* in MM Docket No. 86-487 proposing the allotment of Channel 287A to Fernandina Beach.[4] Subsequently, in our *Report and Order* in this proceeding allotting Channel 293A to Ponte Vedra Beach, we advised interested parties for the first time that we would be considering Channel 227A for Baldwin. Thereafter, on April 8, 1987, we released the *Notice of Proposed Rule Making* in MM Docket No. 87-77 for Baldwin, Florida.[5] That *Notice* proposed Channel 227A instead of Channel 287 as originally proposed by the petitioner. In doing so, the *Notice* specifically stated that we were proposing Channel 227A instead of Channel 287A in order to accommodate Channel 287A at Fernandina Beach. This procedure would have avoided the need to institute a comparative rule making proceeding with respect to the conflicting rule making petitions for Channel 287A at Baldwin and Fernandina Beach, Florida.

PETITION FOR RECONSIDERATION

5. In support of its petition for reconsideration, General Broadcasting states that the proposal to allot Channel 227A to Baldwin was never subject to notice and comment. Instead, General Broadcasting asserts that while the Ponte Vedra Beach proceeding was pending, the staff "conjured up" an alternative Channel 227A for Baldwin which was in conflict with its counterproposal at Ponte Vedra Beach. As such, General Broadcasting argues that the *Report and Order* did not comply with the Commission's statutory obligation to give interested parties prior notice and an opportunity for meaningful participation in this proceeding. In a separate vein, General Broadcasting argues that changing the community appellation to Ponte Vedra Beach was arbitrary and capricious in that Ponte Vedra Beach had never been the subject to comment in this proceeding.

6. In its Opposition to Petition for Reconsideration, Emission de Radio argues that General Broadcasting had sufficient notice and the opportunity to comment on the merits of the proposed allotment at Ponte Vedra Beach. In addition, Emission de Radio refers to the policy set forth in *Andalusia, Alabama*, 49 Fed. Reg. 32201, published August 13, 1984, of favoring a new service over the improvement of an existing service. With respect to the rejection of the Channel 227A counterproposal in this proceeding, Emission de Radio contends that this action is consistent with *Andalusia, supra*, in that it maintained the option of allotting Channel 227A to Baldwin, Florida as a first local service which would be favored over the proposed upgrade at Station WCAT-FM.

DISCUSSION

7. We will grant the petition for reconsideration to the extent of substituting Channel 227A in lieu of Channel 293A at Ponte Vedra Beach.[6] In this regard, it will also be necessary to issue a *Further Notice of Proposed Rule Making* in a separate proceeding to consider the conflicting proposals for Channel 287A at Baldwin and Fernandina Beach, Florida. We discuss the reasons for this action below.

8. After careful consideration of this matter, we are of the view that we did not afford General Broadcasting the required notice that its Channel 227A counterproposal for Ponte Vedra Beach could be precluded by the petition for rule making proposing Channel 287A for Baldwin. There was no notice to the public or any interested party that a Channel 287A petition for rule making for Baldwin was pending or that we were considering Channel 227A to Baldwin as an alternative channel. General Broadcasting was not afforded an opportunity to comment on the merits of a Channel 227A proposal in Baldwin in connection with its Channel 227A counterproposal at Ponte Vedra Beach. This procedure was not consistent with the statutory obligation to afford interested parties a meaningful opportunity to comment on and participate in a rule making proceeding. *See* 5 U.S.C. Section 553(b) and (c). This opportunity must occur prior to the action allotting the channel. *See e.g. Mobil Oil Corporation v. Department of Energy*, 610 F 2d 796,804, N.9 (Temp. Emerg. Ct. of Appeals 1979). We are also of the view that the timely filed counterproposal for Channel 227A at Ponte Vedra was entitled to consideration on its merits separate from any alternative use of Channel 227A which was neither included in this proceeding nor pending in a separate proceeding. In this situation, the comment date in the Ponte Vedra Beach proceeding effectively cut-off such consideration. In order to have maintained the flexibility of allotting Channel 227A to Baldwin, the appropriate procedure would have been to adopt a *Further Notice of Proposed Rule Making* in this proceeding including a Channel 227A proposal at Baldwin. We did not do so in this instance.

9. After a further review of the timely filed submissions in this proceeding, we believe that the appropriate allotment to Ponte Vedra Beach was Channel 227A. This channel will provide a first local service and is preferable over a Channel 293A allotment in that it will permit the grant of an application by Station WCAT-FM, Leesburg, Florida to maintain full Class C facilities. In a related vein, we do no believe that clarifying the appellation to read "Ponte Vedra Beach" deprived any party of notice and an opportunity to file appropriate comments in this proceeding. Moreover, in view of the fact that the coordinates for "Ponte Vedra" and "Ponte Vedra Beach" are the same and the boundaries are apparently identical, any argument that we substituted communities is not well taken.

10. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 13, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED as follows:

City	Channel No.
Ponte Vedra Beach, Florida	227A

11. IT IS FURTHER ORDERED, That the aforementioned petition for reconsideration and motion to consolidate by General Broadcasting of Florida, Inc. ARE GRANTED to the exent indicated above.

12. IT IS FURTHER ORDERED, That the motion for stay by General Broadcasting of Florida, Inc. IS DISMISSED.

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Bradley P. Holmes
Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] "Ponte Vedra" has been clarified to specify "Ponte Vedra Beach" in the caption.

[2] Mattox Guest Broadcasting, Inc., licensee of FM Station WKUB, Blacksheer, Georgia filed a Motion for Extension of Time through April 27, 1987 to oppose the Motion for Consolidate. Mattox Guest Broadcasting, Inc. has not filed such an opposition.

[3] 50 Fed. Reg. 51433, published December 17, 1985.

[4] 2 FCC Rcd 741 (1987).

[5] 2 FCC Rcd 2033 (1987).

[6] This is an equivalent channel in that it would permit principal city coverage of Ponte Vedra Beach in compliance with Section 73.315 of the Rules. This Channel 227A allotment will require a site restriction of 2.2 kilometers south. The reference coordinates are 30-13-3 and 81-22-12. In this connection, we note that these are 14 applications for the Channel 293A Ponte Vedra Beach allotment. These applicants will be permitted to amend their applications without loss of cut-off protection.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-473

In the Matter of

Amendment of Section 73.202(b),	RM-5954
Table of Allotments,	
FM Broadcast Stations.	
(Sylvester, Georgia)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 7, 1988; Released: January 27, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 2 FCC Rcd 6693 (1987), issued in response to a petition filed on behalf of Thomas W. Lawhorne, Sr., (petitioner), proposing the allotment of Channel 291A to Sylvester, Georgia, as that community's second local FM service. Supporting comments were filed by the petitioner reiterating his intention to apply for the channel, if allotted.

2. Further comments in the *Notice of Proposed Rule Making* were also received in support of the allotment of Channel 291A to Sylvester from many of its local residents and government leaders.

3. Channel 291A can be allotted to Sylvester, Georgia in compliance with the minimum distance separation requirements, with a site restriction of 9.1 kilometers (5.7 miles) southwest.[1] The restricted site is necessary to avoid short-spacing to Eastman, Georgia, Station WUFF as proposed in MM Docket No. 88-460.

4. We believe the public interest would be served by the allotment of Channel 291A to Sylvester, Georgia, as that community's second local FM service. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 13, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Sylvester, Georgia	271A, 291A

5. The window period for filing applications will open on **March 14, 1989,** and close on **April 13, 1989.**

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] Reference coordinates for this allotment are 31-28-02 and 83-52-57.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: January 27, 1989

NETWORK COMMUNICATIONS, INC. FILES COMMENTS ON INDIVIDUAL CASE BASIS RATES FOR DS3 SERVICES

PLEADING CYCLE ESTABLISHED

On December 1, 1988, Network Communications, Inc. (NCI), a fiber optic cable provider, filed comments in CC Docket No. 88-136[1] concerning the use of individual case basis (ICB) rates for high capacity DS3 services. The Common Carrier Bureau seeks comment on NCI's submission, particularly NCI's discussion of the extent of competition for DS3 services. The Bureau also encourages comment on NCI's assertion that the Bureau should require the uniform tariffing of DS3 services.

Parties wishing to file comments on the above-referenced matter should do so no later than **February 10, 1989.** Parties are requested to furnish copies of their comments to International Transcription Service, Inc. (ITS), at their office in Room 246, 1919 M Street, N.W., Washington, D.C. 20554, and to the Chief, Tariff Division, Room 518, 1919 M Street, N.W., Washington, D.C. 20554.

Copies of comments and related documents in this proceeding may be obtained from ITS, 2100 M Street, N.W., Washington, D.C. 20036, (202) 857-3800. The documents are also available for public inspection and copying in Room 518, 1919 M Street, N.W., Washington, D.C. 20554.

For further information, contact Amy Glatter Silverman at 632-6917.

FEDERAL COMMUNICATIONS COMMISSION

FOOTNOTE

[1] *See* Local Exchange Carriers' Individual Case Basis DS3 Service Offerings, CC Docket No. 88-136, Order Designating Issues for Investigation, 3 FCC Rcd 2582 (1988); *see also* Supplemental Order Designating Issues for Investigation, CC Docket No. 88-136, 3 FCC Rcd 6066 (1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-50

In re Applications of

METROPLEX COMMUNICATIONS, INC. (WHYI-FM) File No. BRH-860801YJ

For Renewal of License

SOUTHEAST FLORIDA BROADCASTING LIMITED PARTNERSHIP File No. BPH-861030MH

For Construction Permit for a New Commercial FM Station Ft. Lauderdale, Florida

Appearances

Eugene F. Mullin, Nathaniel F. Emmons, Howard M. Weiss and *Lawrence Roberts* on behalf of Metroplex Communications, Inc.; *Lewis I. Cohen, Morton L. Berfield* and *Roy W. Boyce* on behalf of Southeast Florida Broadcasting Limited Partnership; and *Norman Goldstein* on behalf of the Mass Media Bureau, Federal Communications Commission.

INITIAL DECISION OF
CHIEF ADMINISTRATIVE LAW JUDGE
THOMAS B. FITZPATRICK

Issued: January 4, 1989; Released: January 27, 1989

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PRELIMINARY STATEMENT

1. This proceeding involves the application of Metroplex Communications, Inc. (Metroplex) for renewal of license of Radio Station WHYI(FM), Ft. Lauderdale, Florida (WHYI or Y-100), and the mutually exclusive application of Southeast Florida Broadcasting Limited Partnership (Southeast) for construction permit for a new FM station to operate on the frequency now utilized by WHYI.

2. Metroplex's previous license renewal application had been granted for a one-year period ending December 20, 1986. *Metroplex Communications, Inc.*, Initial Decision of Administrative Law Judge Joseph Stirmer; (FCC 85D-74), released December 20, 1985; MM Docket No. 84-261. Metroplex filed the subject renewal application on August 1, 1986, and Southeast filed its competing application on October 30, 1986.

3. By *Hearing Designation Order* (*HDO*), released March 12, 1987, the two applications were designated for hearing on the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

Metroplex Communications, Inc. (*WHYI (FM)*), 2 FCC Rcd 1542 (MMB 1987). For purposes of determining Metroplex's entitlement to a renewal expectancy under the standard comparative issue, the Presiding Judge ruled that the relevant time period was the one-year period of WHYI's most recently granted license term, December 20, 1985, to December 20, 1986. (Tr. 20-21)

4. Prior to the hearing, the Presiding Judge designated additional issues against both applicants pursuant to motions to enlarge issues filed by Metroplex and Southeast, respectively. By *Memorandum Opinion and Order* (FCC 87M-1287), released June 4, 1987, the Presiding Judge designated the following issues against Southeast:

> To determine the facts and circumstances surrounding the certification of Southeast Florida Broadcasting Limited Partnership's financial qualifications; whether such certification was false and the impact thereof on the basic qualifications of Southeast Florida Broadcasting Limited Partnership to be a Commission licensee.
>
> To determine whether Southeast Florida Broadcasting Limited Partnership is financially qualified to construct and operate its proposed station.

The burden of proceeding and the burden of proof on these two issues was placed upon Southeast.

5. By *Memorandum Opinion and Order* (FCC 87M-1810), released July 31, 1987, as subsequently modified by *Memorandum Opinion and Order* (FCC 87M-2111), released September 8, 1987, the Presiding Judge designated the following sponsorship identification issue against Metroplex:

> To determine whether in the operation of Station WHYI, during the period February 1, 1982 to date, Metroplex violated Section 317 of the Communications Act of 1934, as amended and/or 47 C.F.R. 73.1212, and, if so, the effect on Metroplex's basic qualifications to be a Commission licensee.

The cited *Orders* did not allocate the burden of proof on this issue. However, the Presiding Judge ruled at the outset of the hearing that the burden of proof was on Southeast. (Tr. 132-34)

6. A prehearing conference was held on May 21, 1987, and hearings were held December 8-11, 15-18, 21-23, and 28-29, 1987, in Washington, D.C.; January 25-27, 1988, in Miami, Florida; and February 10 and March 2, 1988, in Washington, D.C. The record was closed on March 2, 1988. (Tr. 4514) Proposed Findings of Fact and Conclusions of Law were filed by the applicants and the Mass Media Bureau (Bureau) on May 20, 1988. The applicants filed Reply Findings on June 24, 1988.

FINDINGS OF FACT

I. The Comparative Issue

7. As noted, *supra*, this proceeding involves the application of Metroplex for renewal of its license to operate WHYI(FM), Ft. Lauderdale, Florida, and the mutually exclusive application of Southeast for a construction permit to establish a new FM broadcast station in Ft. Lauderdale, utilizing the frequency currently held by WHYI(FM).

A. *The Community and Area To Be Served*

8. Ft. Lauderdale, located on Florida's Atlantic coast, is part of the major metropolitan area that includes Miami (Dade County), Ft. Lauderdale, and the Palm Beaches (Palm Beach County). Ft. Lauderdale, population 153,279, is located in Broward County, with a population of 1,018,200. Adjacent to the south is Dade County with a population of 1,625,781, and to the north is Palm Beach County with a population of 576,863. The principal communities in the area are Ft. Lauderdale, Hollywood, West Palm Beach, Miami, Miami Beach, and Hialeah. (Metroplex Ex. 5A, pp. 4, 8-10)

B. *Metroplex Communications, Inc. (Metroplex)*

(1) *Ownership and Management - Integration*

9. Metroplex, a corporation with headquarters in Cleveland, Ohio, is owned by the following stockholders: Norman Wain (Wain), 46.6473%; Robert Weiss (Weiss), 46.6473%; David Ross (Ross), 3.8200%; Lewis Fischer, 0.9618%; Charles Schaefer, 0.9618%; Nina Wain, 0.4809%; and Leona Weiss, 0.4809%. Wain is Chairman, Chief Executive Officer, and a Director of Metroplex. Weiss is President, Chief Operating Officer, Secretary, and a Director of Metroplex. Ross is Executive Vice President of Metroplex and President of Metroplex's WHYI Division, with corporate level responsibilities for overseeing the operation of Metroplex's Florida stations. (Metroplex Ex. 1, ¶¶ 3-4; Metroplex Ex. 98, p. 1; Tr. 154)

10. Metroplex, which was founded by Wain and Weiss, has been the licensee of WHYI since 1978. Ross has been the General Manager of WHYI since 1978, except for a two-year period in 1980-82 when he served as Group Vice President for Metroplex's Florida stations. Wain, as Metroplex's Chief Executive Officer, has the ultimate responsibility for establishing and administering the overall operating policies of WHYI and Metroplex's other stations. (Metroplex Exs. 1 and 2) Metroplex proposes no integration of ownership into management and does not claim integration credit for any of its principals.[1]

(2) *Other Media Interests*

11. Metroplex is the licensee of the following radio stations: WHYI(FM), Ft. Lauderdale, FL; WKIX(AM), Raleigh, NC; WYLT(FM), Raleigh, NC; WRFX(FM), Kannapolis, NC; WPRD(AM), Winter Park, FL; WJYO(FM), Mt. Dora, FL; WHBO(AM), Pinellas Park, FL; WNLT(FM), Clearwater, FL; WFYV(AM), Jacksonville, FL; and WFYV(FM), Atlantic Beach, FL. As of the January 5, 1987, "B cut-off" date in this proceeding, the following stations were also attributable to Metroplex: WRKB(AM), Kannapolis, NC; WCPT(AM), Alexandria, VA; WCXR(FM), Woodbridge, VA; and WOIO(TV), Shaker Heights, OH (16% ownership). (Metroplex Ex. 98, pp. 1-2)

(3) *Renewal Expectancy Re WHYI (FM)*

12. As noted, *supra*, the relevant time period for purposes of determining Metroplex's entitlement to a renewal expectancy under the comparative issue is the period December 20, 1985, to December 20, 1986. (Tr. 20-21)

(a) *WHYI's Public Service Philosophy*

13. Three principles guided WHYI's approach to serving community needs during the renewal period, December 20, 1985, through December 20, 1986. (Metroplex Ex. 1, ¶ 6, Tr. 20-21, 384) The first was that WHYI and its staff should be actively involved in community activities. The second principle was that WHYI should provide a forum for community expression. (Tr. 580) The third principle was that WHYI should use its entertainment programming to foster participation by the public in worthy community activities. (Metroplex Ex. 1, ¶ 117) As detailed, *infra*, WHYI sought to provide an entertainment vehicle for publicizing the public service messages of charitable organizations and for raising funds for charities directly. (Metroplex Ex. 1, ¶¶ 28, 29)

(b) *WHYI's Ascertainment Efforts*

14. In order to ascertain the community's needs and interests, members of the WHYI staff, in March, June, September, and December 1986, participated in formal group interviews of area community leaders sponsored by the South Florida Radio Broadcasters Association. Ross did not attend any of the interview sessions. (Metroplex Ex. 1, ¶ 12, Tr. 389) However, Ross reviewed the interview forms completed by the WHYI staff members. (Metroplex Ex. 1, ¶ 12, att. 3) About 75 community leaders of Broward and Dade Counties from government, charitable, business, minority, women's, health, senior citizens', children's, religious, educational, political, and other civic organizations were interviewed during these sessions. (Metroplex Ex. 1, ¶¶ 11-20)

15. The March 20, 1986, session was attended by Joan Siani (Siani), WHYI's Public Affairs Director, and Constance Smith (Smith), the station's Business Manager. The March 21, 1986, session was attended by Siani and Julie Wilson, the station's Assistant Promotion Director. The session on June 9, 1986, was attended by WHYI's General Sales Manager and a programming department employee. The session on June 20, 1986, was attended by Siani and an employee of the WHYI business office. A session on September 17, 1986, was attended by employees in bookkeeping and sales. The September 18, 1986, session was attended by Siani and Smith. The session on December 17, 1986, was attended by a programming department employee, and the other session on December 17, 1986, was attended by Smith and a Ms. Walker, whose position is not identified. (Metroplex Ex. 1, ¶¶ 11-20)

16. The sessions took place in two or three rooms simultaneously and each WHYI employee would go to a different room and complete community leader interview forms for the persons interviewed. (Metroplex Ex. 1, att. 3)

17. Ross, who did not attend any community leader interviews, requested Peter Fulton, an "FCC compliance" consultant hired by Metroplex, to prepare an analysis of

the needs ascertained from June 1985 to June 1986 in terms of the percent of interviewees mentioning certain problems. (Metroplex Ex. 1, ¶ 21, and att. 4; Tr. 392-93) Ross reviewed the written ascertainment summaries with his staff, urging them to deal with the principal issues. (Tr. 571-72, 582; Metroplex Ex. 1, att. 1) The station's Public Affairs Director, Joan Siani, made specific programming recommendations based on the community leader ascertainment interviews. (Metroplex Ex. 1, att. 2) Ross correlated several programs directly with ascertained needs and problems, including programming addressing Ft. Lauderdale's Spring Break, WHYI's Highway Helper program, programming concerning activities of the Broward County Sheriff's Department, traffic reports, and WHYI's campaigns against drunk driving and drug abuse. (Metroplex Ex. 1, ¶¶ 100, 101, 116, 122; Tr. 572-75, 582-83)

18. The station's compliance consultant, Fulton, usually came to the station once a month and was given the daily records of what the logs showed for the amount of news and Public Service Announcements (PSAs) and other information as to what was broadcast. (Tr. 396) Fulton reviewed the ascertainment forms and programming, and he and Ross discussed this information and, from time to time, Ross would direct that certain problems be addressed. (Tr. 397) Quarterly, WHYI prepared issues/programs lists and placed them in the public file. The lists highlighted WHYI's programming, addressing some of the significant issues of public importance in the station's service area, focusing on Ft. Lauderdale, the community of license, and Broward County. The lists were drafted by Fulton based on records maintained by the station's public affairs director, news director and office manager. These station personnel and Ross reviewed the drafts before they were placed in the public file. (Metroplex Ex. 1, ¶ 25, att. 5; Tr. 396-97)

19. WHYI supplemented its formal ascertainment with informal interaction between the station's staff and members of the public at public service events and school or charity functions. Ross encouraged his employees, especially his on-air staff, to participate at such events so as to increase their sensitivity to community issues. Another means of ascertainment was on-air interaction with the station's listeners, particularly on the "Morning Show," where listeners who telephoned in were put on the air to discuss issues of concern to them, and where comments of the public were aired in a segment called "Y-100 Listens to You." The staff, to the extent they reported problems or needs, did it verbally or by DJO memos. In ascertaining community needs and interests, WHYI also drew upon the involvement of its management employees in various community organizations. (Metroplex Ex. 1, ¶¶ 11-20, 22-23, 73-74, 79, 106; Tr. 394-95)

(c) *WHYI's Performance During the License Period - 12/20/85 - 12/20/86*

(1) *Quantitative Analysis Re Programming*

20. The record contains WHYI programming data for a 1986 composite week selected by extrapolation from the most recent composite week specified under former Commission requirements for Florida renewals. (Metroplex Ex. 1, ¶¶ 126-27) The data reflects the following amounts and percentages of broadcast time (excluding commercials) that were devoted to various categories of programming during the composite week. (Metroplex Ex. 1, ¶ 129; Southeast Ex. 10)

24 - Hour Day

	Minutes	Percentage
News	312.5	3.1
Sports	44.75	0.44
Public Affairs	191.0	1.9
PSAs	31.5	0.31
TOTAL	579.75	5.75

These data do not reflect unlogged comments and discussions about civic activities and news events that occurred, usually on an impromptu basis and often involving comments from the public.[2] (Metroplex Ex. 1, ¶ 130) The "news" category includes newscasts, weather, traffic reports, and entertainment news ("Joni Goes to Hollywood"). (Tr. 533, 562-63) The program "Joni Goes to Hollywood" totaled 5 minutes of the 312.5 minutes of "news" logged during the composite week. (Tr. 563; Southeast Ex. 10, ¶ 1) The composite week figure includes in the category of public affairs a 30 minute program entitled "Powerline." (Tr. 536; Southeast Ex. 8, p. 3)

(2) *WHYI's Issue Responsive Programming*

21. WHYI broadcast the following programs designed to address ascertained needs:

22. *The "Morning Show "* - This station-produced program was broadcast from 6-10 a.m. on weekdays. It was local in orientation, including a mixture of popular records, humor, news, sports, weather, school information and special features. The program was interactive in nature, depending heavily on phone calls from listeners expressing their opinions on various subjects, their interests and their reaction to station programming and promotions. During the "Morning Show," four 5 minute newscasts were broadcast at 20 minutes after the hour, and three 5 minute sportscasts were broadcast at 50 minutes after the hour. Traffic reports were also broadcast during the "Morning Show" and reports on the weather were broadcast during the "Morning Show" and reports on the weather were broadcast throughout the day. These newscasts and reports are more fully discussed, *infra.* (Metroplex Ex. 1, ¶¶ 79-80; Southeast Ex. 10)

23. During the "Morning Show" newscasts, the station followed many news stories on a continuing basis, such as the overcrowding in Broward County Jails, efforts to reduce rowdiness during the Spring Break, school issues in both Broward and Dade Counties and labor and financial problems of Miami-based Eastern Airlines. WHYI's "Morning Show" newscasts provided information about civic events including Winterfest, the March of Dimes Superwalks, and the Calle Ocho in Little Havana in Miami. The newscasts also provided information about serious public concerns such as contaminated water supplies, need for blood donors, drunk drivers, and the need for volunteers to search for a missing child. (Metroplex Ex. 1, ¶¶ 83-85, att. 24)

24. From time to time WHYI aired discussions of issues and special events on the "Morning Show," usually with listener participation. For example, on January 29, 1986, the station broadcast listener reactions to the Space Shuttle disaster, which had occurred the previous day. On May 5, 1986, WHYI broadcast discussion by parents, students, and a School Board Member of a controversial

decision to ban shorts and skateboards on all Broward County school campuses. The 30 minutes of discussion was a total of various shorter segments interspersed throughout the program. (Tr. 489-90) On July 15, 1986, the station devoted approximately 25 minutes to discussion of a controversial plan for painting a local highway tunnel. This discussion, which was not planned in advance, consisted of a series of short segments aired throughout the program. (Tr. 490-91) On August 20, 1986, the "Morning Show" broadcast approximately 20 minutes of discussion interspersed during the program concerning pit bull dogs and their potential safety threat.

25. On November 21 and 24, 1986, the station devoted approximately 45 minutes to a dialogue among listeners, the station's air staff, and Coast Guard and U.S. Customs officials on the propriety of Coast Guard drug search methods. On November 21, there was discussion about the manner and technique of the Coast Guard and Customs personnel, which engendered telephone calls from listeners. The discussion was precipitated by the conversation of a disc jockey with a listener. The disc jockey's boat had been stopped and searched by the Coast Guard in a manner he considered abusive. The November 24th show provided time to Coast Guard and Customs officials to provide rebuttal and to explain the difficulties of trying to stem the flow of illegal drugs into South Florida. The officials asserted that mistreatment of boaters was not condoned. They also pointed out that boaters have a right to file complaints and that they had received few such complaints. (Metroplex Ex. 1, ¶¶ 98-99; Tr. 497-98)

26. In connection with the Statue of Liberty centennial, to which WHYI devoted coverage in June and July, 1986, the station broadcast interviews with public officials and expressions of viewpoint by listeners about what the Statue of Liberty meant to them. (Metroplex Ex. 1, ¶¶ 86, 91-93, 95; Tr. 493- 96)

27. Between June 16, 1986, and July 4, 1986, the primary focus of the "Morning Show" each weekday morning was a discussion concerning the 100th anniversary of the Statue of Liberty. Records were played and commercials aired during these programs. (Tr. 494) The discussions involved callers and took place over the air when records were not being played. The listeners who called in made comments on what the Statue of Liberty meant to them, how they came to this country, and why they were proud to be Americans. (Tr. 493-94) Leading up to and during the Liberty Day broadcasts, WHYI broadcast interviews with politicians and other dignitaries, including the area congressman, a local commissioner, local mayors, and the Governor of Florida. The interviews were one-on-one between station personnel and the interviewee as to their ethnic heritage and how their ancestors arrived here. Some were broadcast live, others were taped and broadcast later. (Metroplex Ex. 1, ¶¶ 55-56, 92-93; Tr. 493-95)

28. WHYI addressed issues of concern to the community in two regularly scheduled program-length public affairs programs, "Here's Help" and "Y's Rap."

29. "*Here's Help* " was a weekly one-hour public affairs and informational interview program broadcast at either 6:00 a.m. or 7:00 a.m. on Sundays. It was broadcast at 7:00 a.m. through March 6, 1986, and on July 1 and 13, 1986, and at 6:00 a.m. on the remaining Sundays during the license period. (Metroplex Ex. 91) The program, which took its name from a local nonprofit drug rehabilitation center called Here's Help, Inc., primarily addressed issues relating to the drug problem. [3] (Metroplex Ex. 1, ¶ 110; Metroplex Ex. 36, ¶ 1; Metroplex Ex. 91; Tr. 3871-72) Guest interviewees included local police chiefs, drug abuse counsellors, drug rehabilitation patients, students, doctors, attorneys, and social service officials. (Metroplex Ex. 1, att. 29) The purpose of "Here's Help," according to its producer, director and moderator, Salvatore Zocco (Zocco), Assistant Program Director at Here's Help, Inc., was to help educate the public and alleviate social and personal difficulties caused by drug abuse and other social problems. (Metroplex Ex. 36 ¶ 3) Concerned listeners were often encouraged to contact "Here's Help" guests after the program for further information or advice, and typically listeners did respond. (Metroplex Ex. 36, ¶ 4; Tr. 3894)

30. Zocco was neither paid for preparing and presenting the "Here's Help" program; nor was he reimbursed for expenses. (Tr. 3865, 3867, 3869, 3880) He typically prepared it at 6:00 p.m. of the Thursday prior to the air date. He lined up the guests who met him at the WHYI studio. WHYI provided no budget for the program and there were no WHYI employees present at the taping. (Tr. 3866-69) Zocco was initially taught by WHYI personnel how to tape the show. WHYI's subsequent input was to provide tapes, studio facilities and air-time. (Tr. 3870)

31. "*Y's Rap*" was a weekly one-hour public affairs and informational interview program broadcast at 6:00 a.m. on those dates that "Here's Help" was broadcast at 7:00 a.m., and otherwise at 7:00 a.m. on Sundays. The program was produced and hosted by WHYI's Public Affairs Director, Joan Siani,[4] who interviewed guests on a variety of topics. Among the subjects discussed were: AIDS; tax law changes; the problems of poverty and hunger; discrimination against blacks in the communications industry; women in business; need for improvements in the local school system; teenage pregnancy rate in Miami; cystic fibrosis; new state law government dispensation of prescription drugs; the Crime Stoppers Program; local cultural arts programs; pros and cons of casino gambling; Child Assault Prevention Project; fire prevention; Enterprise Zone Referendum on election ballot; Ft. Lauderdale tourism; drug rehabilitation; and suicide prevention. (Metroplex Ex. 1, ¶ 108, att. 28; Metroplex Ex. 91; Tr. 514)

32. "*Y - 100 Listens to You* " - WHYI broadcast short-form public affairs segments featuring comments and discussion of topical concerns by members of WHYI's listening public. There was a segment of the "Morning Show" called "Y-100 Listens to You," which gave listeners and community members an opportunity to express their opinions on a series of topics that WHYI found to be of interest to the public. To produce this program, WHYI's News Director went out into the community and asked persons to comment on topics of interest. WHYI edited the taped responses and broadcast them over the air virtually every weekday during 1986 beginning in April. These 60-second segments were broadcast during morning drive time four times a day until May, when they began running eight times a day on weekdays and four times a day on Saturdays. These four additional segments were broadcast between 2:00 a.m. and 6:00 a.m. (Tr. 513) In August 1986, WHYI also began running the segment twice during weekday mid-day shifts. (Metroplex Ex. 1, ¶ 106; Tr. 510-13)

33. Among the issues on which listeners expressed themselves on "Y-100 Listens to You," which was logged as a public affairs program, were: casino gambling in

South Florida; help for the homeless; the quality of public education; cable television pornography ban; overcrowding in local jails; Florida state lottery; the 55 mph speed limit; AIDS; English as the official state language; cigarette tax; mandatory seat belt law; freeze on insurance rates; need for commuter rail system; Meese Commission report on pornography; traffic and transportation problems; use of U.S. military to combat drug trafficking; cuts in funding for social services; statewide automobile inspections; mandatory drug testing; need for pit bull ordinance; smoking ban on domestic airlines; handgun control; tax reform legislation; fairness of divorce laws; and Federal funding to fight drug abuse. (Metroplex Ex. 1, att. 27; Tr. 469)

34. *WHYI's News Broadcasts* - As noted, *supra*, during the "Morning Show" four 5 minute newscasts were broadcast at 20 minutes after the hour and three 5 minute sportscasts were broadcast at 50 minutes after the hour. (Metroplex Ex. 1, ¶ 80) The newscasts during the "Morning Show" typically included a 60 second commercial and a 15 second public service announcement. (Tr. 466) In addition to the "Morning Show" newscasts, the station broadcast four newscasts Monday through Saturday at 2:20, 3:20, 4:20 and 5:20 a.m. These broadcasts contained strictly news material. (Tr. 466, 470) The news for the 2:20-5:20 a.m. broadcasts was the same. They were prepared and taped between 11:00 a.m. and 5:00 p.m. the previous day with some additional news taken off the Associated Press wire by the announcer. (Tr. 475, 480, 593) The disc jockey on duty when the newscasts were aired could add something to the reports if an event occurred during the night which warranted it, but only after obtaining telephone permission from station management. Ross cited one instance when this happened. (Tr. 594)

35. The program "Joni Goes to Hollywood," which presented news about the entertainment field, was also considered a newscast. (Tr. 469-70, 533) WHYI's newscasts were prepared by Ron Hersey (Hersey), the station's news director,[5] who relied on several sources. (Tr. 451) The station subscribed to the Associated Press News Service. The news director gathered news by reviewing various local and national newspapers and magazines and by monitoring television and all news station reports. The station also obtained news leads from listeners who called in and Hersey developed news stories while conducting "Y-100 Listens to You" interviews. (Metroplex Ex. 1, ¶ 81) According to Ross, WHYI placed special and continuing emphasis on news events that had special importance to Ft. Lauderdale, Broward and Dade Counties, and South Florida. (Metroplex Ex. 1, ¶ 82; Tr. 474, 478-79)

36. The only other member of the staff who was occasionally involved in preparing newscasts was Mark Lipof (Lipof), who prepared news if Hersey was on vacation or otherwise unavailable. (Tr. 593) Hersey, in addition to news, was responsible for the "Y-100 Listens to You" interview segments, made appearances at sales and charitable events, and participated in a program entitled "Sunday Morning Countdown" that was prepared on Fridays. In addition to preparing and presenting news on the "Morning Show," he did voice impersonations during other parts of the "Morning Show." (Tr. 472-74)

37. News coverage on the station included reports on local civic events, ballot issues, police misconduct, drugs, labor disputes, municipal annexation, crime, county budget cuts, street demonstrations, political campaigns, local ordinances, election results, water contamination, AIDS, airport expansion, highway problems, conditions in local jails, public health matters, mandatory seat belt law, the Pope's visit to Miami, teachers' salaries, President Reagan's appearance in Florida, shark sightings, highway deaths, tropical storms and hurricanes, public transit, tax increases, traffic law enforcement, and other topics. (Metroplex Ex. 1, att. 24)

38. *Traffic Reports* - As noted, *supra*, the "Morning Show" included traffic reports. These reports ran a total of four to eight minutes each weekday on the show. The reporter, Lipof, was a part-time employee. The traffic reporter monitored police scanners and relied on various contacts with enforcement officials in sheriff offices and various police departments who patrolled or monitored traffic. He also relied on individual citizens who called him with information. Ross acknowledged that listening to traffic reports on other radio stations was one source of information. (Tr. 502) The reporter, for two months in 1986, had a cellular traffic line whereby anyone with a cellular car phone could call the station with on-site information about traffic conditions. (Metroplex Ex. 1, ¶ 100, att. 25; Tr. 499-502, 597, 609)

39. *Weather Reports* - Weather reports were broadcast during the "Morning Show" for approximately 60 seconds per hour and at other times during the 24 hour broadcast day, averaging 30 seconds per hour. The station did not have its own meteorologist on the staff, nor did it subscribe to a weather service. It contracted with a company for beach reports which were broadcast four times a day during weekends. The weather reports were taken from the wire service and from NOAA. During the hurricane season, the station was in contact with the Coast Guard. Hersey prepared the weather reports during the "Morning Show" and the announcer on duty prepared them at other times. (Metroplex Ex. 1, ¶¶ 80, 140; Tr. 507-10)

40. *Sports* - Three 5 minute sports reports were broadcast at 50 minutes past the hour during the "Morning Show." Sports was a major community topic of interest in Ft. Lauderdale and South Florida. Ft. Lauderdale is the home of the New York Yankees during Spring training, and is also the home of the swimming Hall of Fame. Additionally, the professional Miami Dolphins and the University of Miami Hurricanes are in the area. High school football scores during the season were broadcast between 10-11 p.m. on Thursday nights and again on Friday morning along with the Football Player of the Week. (Metroplex Ex. 1, ¶ 102, att. 26; Tr. 505-07)

41. *School Lunch Reports* - WHYI broadcast Broward, Dade, and Palm Beach County school lunch menus and school closing information on the "Morning Show." The Dade County menus were reported in English and Spanish. The reports let mothers and children know what was available at the schools, and were approximately three minutes in length. They were broadcast once each school day. (Metroplex Ex. 1, ¶ 103; Tr. 507)

42. During most of 1986, WHYI broadcast during the "Morning Show" a 90-120 second segment once or twice a week in which a representative of the Broward County Humane Society would bring and describe one or more pets and encourage people to adopt them. (Metroplex Ex. 1, ¶ 105)

43. *Dateline* - Based on informal research which indicated that many single people were unhappy with their single status, the station produced a program entitled "Dateline." The program was designed to give singles an

opportunity to express their hopes and frustrations concerning companionship, and to allow for commentary by psychologists and other professionals in the field. The program was initiated in May 1986 as a one hour live show on Sunday evenings. The program contained commercials but no records. However, the program did not maintain a level of listener interest sufficient to justify its continuation and it was discontinued in mid-August. (Metroplex Ex. 1, ¶¶ 112-115, att. 30; Tr. 515-19, 524-26, 564)

44. *Drunk Driving and Drug Abuse Campaigns* - WHYI took an active role in the effort to encourage people not to drive after drinking and to encourage those people who do drink to do so responsibly. This campaign stemmed from a personal commitment that Ross made to U.S. Senator Paula Hawkins to help coalesce South Florida broadcasters to educate listeners about the dangers of drinking and driving. (Metroplex Ex. 1, ¶ 116) Working with entertainers, local restaurants and nightclubs, and local high schools, WHYI produced a series of announcements combatting drunk driving, using the theme "Arrive Alive, Don't Drink and Drive." The announcements featured either a prominent artist/entertainer or a member of the Florida Entertainment and Dining Association (FEDA). Some of the entertainers who spoke out on WHYI against drunk driving were David Letterman, Janet Jackson, Miami Sound Machine, Sting, Heart, Eddie Money, Paul Hogan, Sheila E., Van Halen, Phil Collins, Mister Mister, Anita Backer, and Nu Shooz. The FEDA announcements featured representatives of local restaurants or nightclubs encouraging people to enjoy themselves without mixing alcohol and driving. During the renewal period, WHYI broadcast approximately 4,350 such announcements, which were of varying lengths. The composite week logs reflect that 75 15 second drug driving PSAs and 2 30 second drunk driving PSAs were run. (Metroplex Ex. 1, ¶¶ 116-18, atts. 31-33; Tr. 526; Southeast Ex. 10)

45. One of the participants in the FEDA PSAs was Metroplex public witness, Mary Fanizzi, of Penrod's on the Beach, a WHYI advertiser. (Metroplex Ex. 53, ¶ 1) Fanizzi confirmed that the issue of drinking by young people during the Ft. Lauderdale spring break period was an important issue in the area which could have a serious impact on Penrod's and the hospitality industry if a lessening of young people visiting Ft. Lauderdale during the spring break occurred. (Tr. 4194-95) The text of the PSAs involving Penrod's was:

> Hi, my name is Mary Fanizzi, and I'm with Penrod's All American Beach Bar, reminding you to come down and have fun at Penrod's, and remember, please don't drink and drive. (Tr. 4198)

46. WHYI also participated as the official radio station for Project Graduation in 1986. This project sought to combat drinking and driving among teenagers during the high school prom and pre-graduation party season. WHYI broadcast on-air announcements supporting Project Graduation, and its disc jockeys attended Project Graduation events at local high schools. WHYI invited students to tape their own personal messages against drunk driving, which WHYI broadcast as PSAs in May and June 1986. WHYI also worked with high school Students Against Drunk Driving (SADD) organizations throughout the year and broadcast announcements about SADD sponsored events at local schools. (Metroplex Ex. 1, ¶¶ 116, 119-21, att. 35; Tr. 527)

47. Additionally, WHYI aired programming addressing the problem of drug abuse and the need for drug treatment. In addition to the "Here's Help" public affairs program and the Haunted House promotion, WHYI broadcast announcements in 1986 for the Here's Help drug treatment center and suicide hotline, the Victoria Hospital Cocaine Hotline, Spectrum (cocaine treatment center) Family Counseling Services, and the Dodge Hospital Teenage Alcohol and Drug Problem Hotline. WHYI sent its mobile van to support the opening of a new female dormitory at Here's Help and the Rally for the Red Ribbon/Just Say No To Drugs effort co-sponsored by Informed Families of Dade County, a group dedicated to drug and alcohol-free activities for local youths. As noted, *supra*, WHYI broadcast "Y's Rap" public affairs programs featuring representatives of Narcotics Anonymous and the New Horizons Clinic for Specialized Treatment for Cocaine Dependency. (Metroplex Ex. 1, ¶ 122)

(3) *Community Involvement of WHYI and Its Staff*

48. Ross explained that "part and parcel of [his] formula for building the radio station has been community involvement." He did not consider public service programming as the sole means to meet his obligations. A major focus of WHYI's public service efforts was the station's participation in local charities and community service activities. Participation included on-air PSAs, promotional announcements and discussions, news reports and on-air reports from the scene of events and public affairs programs. The station also provided support at the site of events with disc jockeys and equipment. WHYI's PSAs were produced by the station and promoted either local South Florida organizations or local chapters of national organizations. PSAs usually were read from prepared scripts. Promotional announcements generally involved more extended disc jockey discussion concerning an activity and were done either with a script or on an impromptu basis. (Metroplex Ex. 1, ¶ 26, att. 6)

49. Set forth, *infra*, are the contributions of air time,[9] staff activities, and logistical support furnished to a number of charitable organizations.

50. *March of Dimes* - In 1986 WHYI was the exclusive radio sponsor of the Broward County Superwalk and the Dade County Superwalk for the South Florida Chapter of the March of Dimes. Betty Lou Randolph, Chapter Director of the South Florida Chapter of the March of Dimes, and a public witness, explained that WHYI was made the exclusive sponsor because of "the outstanding performance the station has given to the March of Dimes over the years." (Metroplex Ex. 36, ¶ 6) WHYI's sponsorship entailed personal involvement in the campaign by Ross, who was on the Board of Directors of the South Florida Chapter of the the March of Dimes, and Anthony Novia, WHYI's Promotions Director, who was the Honorary Youth Chairman for the 1986 Superwalks. (Metroplex Ex. 36, ¶¶ 9, 24; Metroplex Ex. 50, ¶ 2) From March 5-22, 1986, the station aired PSAs and promotional announcements for the two March of Dimes Superwalks held in Dade and Broward Counties. The WHYI staff made on-air promotional announcements, attended planning meetings, or walked in one of the walkathons. In the weeks leading up to the events, WHYI coordinated personal appearances by its air personalities and staff members, utilizing its van

with the WHYI logo on it, at school assemblies and local businesses to help create interest in the Superwalk, and explained the advance requirements for participation. (Tr. 398-99, 3825) On the day of the events, WHYI provided entertainment and prizes at the locations and announced reports from the events about their progress. The station van was present and periodically drove the walk route. (Metroplex Ex. 34, ¶ 7; Tr. 3827) The station broadcast live reports, including traffic reports, of unspecified frequency and duration. (Metroplex Ex. 1, ¶ 17; Metroplex Ex. 34, ¶¶ 7-8) WHYI, by using its industry contacts, obtained the appearance of the Miami Sound Machine at the events. (Tr. 400) In the ensuing weeks, WHYI broadcast announcements reminding walkers of the need to collect their pledges. The Superwalks raised $1,013,000 for the March of Dimes. Other WHYI activities for the March of Dimes in 1986 included announcements for several entertainment events benefitting the March of Dimes and an appearance at a dance that WHYI donated to the top fundraising school. WHYI provided a disc jockey and music. Its logo was prominently displayed. (Metroplex Ex. 1, ¶ 27; Metroplex Ex. 34, ¶¶ 20-21; Metroplex Ex. 36, ¶¶ 11, 22)

51. *Multiple Sclerosis* - WHYI raised money for the South Florida Chapters of the National Multiple Sclerosis Society in April and May, 1986. The station served as the official radio station sponsor of the Third Annual "Ugliest Bartender Contest," in which bartenders were encouraged to collect donations from their patrons, with a bartender receiving one vote for every 25 cents collected. WHYI supported this charitable activity with on-air announcements, disc jockey discussion, and reporting of results. From April 2 to 16, WHYI broadcast announcements and disc jockey discussions promoting the start of the contest. During the April 16-May 18 contest dates, WHYI discussed the contest during the "Morning Show" and broadcast PSAs throughout the day. The station periodically announced which bartenders were raising the most money. As part of the contest, WHYI also broadcast PSAs emphasizing the need for responsible drinking by those who drive. During the contest, WHYI's Sports Director, John Kross, made personal appearances throughout South Florida to support the efforts of WHYI and the National Multiple Sclerosis Society. (Metroplex Ex. 1, ¶¶ 29-32)

52. A document prepared by Multiple Sclerosis (MS) reflected that the event was co-sponsored by a local beer distributor and a "major radio station." (Metroplex Ex. 1, att. 7, pp. 2-5) This document indicated that:

> [T]he program provides tremendous product promotion and public relations impact for the brewery and the taverns.

It reflected that the radio station, in addition to providing public service coverage, could receive paid promotions and advertising spots from the brewery. (Metroplex Ex. 1, att. 7, p. 2) MS also promised that all promotional material, including bartender kits, posters, buttons, tee shirts, instructional sheets and table top tents, would bear the WHYI logo and WHYI would be mentioned in all press releases. MS pointed out that WHYI would gain increased visibility among bars and their clientele, especially since WHYI would have a captive audience for announcements as to the winners in the promotion. (Metroplex Ex. 1, att. 7, p. 4) The bartender registration form had the MS logo flanked by the Miller beer and WHYI logos in equal prominence. (Metroplex Ex. 1, att. 7, p. 18)

53. *Muscular Dystrophy* - WHYI was also involved in the local South Florida activities connected with Jerry Lewis' 1986 national Labor Day Telethon for the Muscular Dystrophy Association (MDA). The WHYI on-air staff worked with WTVJ-TV, Channel 4, Miami, to raise money at the 17th Street Marriott in Broward County and the Dadeland Mall in Dade County, the largest mall in Miami. WHYI supported the effort on the air with PSAs and disc jockey discussion in advance of and during the event. The disc jockeys encouraged listeners to meet them at the Marriott and the Mall to donate money. A giant fish bowl was set up to collect funds. The WHYI logo was displayed at or near the fish bowl. (Tr. 3947) WTVJ-TV televised the proceedings from the Mall, and WHYI personalities, wearing WHYI tee shirts, were featured on the local cutins telecast by Channel 4 thanking contributors for their donations and encouraging people to visit the Mall to contribute. (Metroplex Ex. 1, ¶ 33; Metroplex Ex. 37; Tr. 402-03)

54. Gregory Birkhimer, Program Coordinator for the Muscular Dystrophy Association, expressed the view that WHYI was "a major contributor to the success" of the telethon. He explained that the MDA chose WHYI to promote the events because the station reached a large and diverse audience in terms of age and income. He also explained that it was important to have the WHYI logo associated with MDA because they wanted to be associated with an upbeat positive radio station that could portray its message to the people. (Tr. 3959-62) Later in the year, WHYI broadcast reports covering a major breakthrough in Muscular Dystrophy research. (Metroplex Ex. 1 ¶ 33; Metroplex Ex. 37, ¶¶ 2 and 9)

55. Also during 1986, a station representative attended a party sponsored by MDA for a high school group. The station representative, who was wearing a jacket displaying the WHYI logo, played music and distributed gifts, including WHYI tee shirts. (Metroplex Ex. 37, ¶ 5; Tr. 3952)

56. *Shark Attack Victim* - In October 1986, WHYI conducted a campaign to collect stuffed animals and other items for Helena Florez, a seven year old Ft. Lauderdale area girl who was hospitalized after being attacked by a shark. The station aired an unspecified number of announcements asking listeners to bring donations to the WHYI studio, and sent its mobile van across the state to Tampa to deliver the donations to the hospital. The station also urged listeners to contribute to a trust fund to help defray Helena's hospital expenses, an effort that raised several thousand dollars. (Metroplex Ex. 1, ¶¶ 34-35)

57. *Christmas Wish List* - During the period prior to Christmas 1985, WHYI was co-sponsor along with 7-Up and Winn Dixie stores of an event whereby grants of cash or merchandise would be given to needy persons. (Metroplex Ex. 1, ¶¶ 36-38) 7-Up put displays on counters in the Winn Dixie stories which had entry blanks persons could use to write to WHYI explaining their needs. (Tr. 407) The displays in the Winn Dixie stores referenced WHYI and displayed its logo. (Tr. 409) WHYI broadcast programming relating to this event of unspecified frequency and duration encouraging listeners to send in entry forms. WHYI selected the 20 most needy persons and it, along with 7-Up, donated gifts of cash, merchan-

dise, and services. WHYI donated $5,000 cash and $7,000 in advertising trade-outs. (Metroplex Ex. 1, ¶ 22; Tr. 407-08)

58. WHYI also broadcast announcements of unspecified number and duration asking listeners to donate toys to needy children through the Voice for Children's Rights. WHYI also promoted over the air the organization's infant and toddler clothing drives. (Metroplex Ex. 1, ¶¶ 36, 38)

59. *American Cancer Society* - In June 1986, WHYI supported the American Cancer Society with on-air announcements of unspecified frequency and duration and discussion about a fundraiser where South Florida personalities and business leaders were "arrested" and had to raise funds to "bail" themselves out. Some of the station's disc jockeys had themselves "arrested" on the air and invited listeners and the WHYI staff to donate "bail" money. WHYI supported a similar fundraiser for the Children's Cancer Clinic of the University of Miami in April 1986 called "Jail-House Rock." Ross was "arrested" and spent over three hours raising more than $1,000. (Metroplex Ex. 1, ¶ 40)

60. *Greater Miami Heart Association* - On February 15, 1986, the Greater Miami Heart Association sponsored a jump rope competition among the schools at the Westland Mall in Hialeah, Florida. WHYI sent a disc jockey and engineer to the mall. It also brought the WHYI van and sound system and gave away prizes to participants. (Metroplex Ex. 45, ¶¶ 2-3)

61. *American Lung Association* - Between October and December 1986, WHYI participated in an on-air promotion for the American Lung Association's fundraising drive. The station also broadcast announcements of unspecified frequency and duration for several organizations that help people who wish to stop smoking. (Metroplex Ex. 1, ¶ 41; Metroplex Ex. 46, pp. 2-3)

62. *Daily Bread Community Food Bank* - In January 1986, WHYI devoted part of one of its "Y's Rap" programs to a discussion of the activities of Daily Bread Community Food Bank, a nonprofit organization that finds available food and moves it to agencies that feed the needy. (Metroplex Ex. 52, ¶¶ 2-3; Metroplex Ex. 1, att. 28, p. 1) The station also supported that organization's Thanksgiving drive to collect food for needy families by broadcasting announcements of unspecified frequency and duration to publicize the need for food donations and how donors could participate. Howard Cawein, the organization's Executive Director, noted that WHYI's assistance helped the project raise double the amount of food raised the previous year. (Metroplex Ex. 52, ¶ 4)

63. *United Negro College Fund* - During Black History Month, WHYI broadcast a co-promotion with McDonald's whereby 25 cents from each large soft drink sold by McDonald's went to support the United Negro College Fund. WHYI, as did other stations, supported this program by broadcasting an unspecified number of announcements. (Metroplex Ex. 1, ¶ 55; Metroplex Ex. 51, p. 2; Tr. 4082-84)

64. WHYI, along with other stations, also aired press releases for the Ronald McDonald House, a residence for parents of seriously ill children. (Metroplex Ex. 51, ¶¶ 2-3; Tr. 4078) McDonald's also had a program to support the Broward Sheriff's Office Youth Explorer recruitment effort. McDonald's made its locations available for use as places where youths could register for the program. WHYI provided its van, with the WHYI logo, for a kick-off event at the McDonald's in Pembroke Pines. (Metroplex Ex. 51, p. 3; Tr. 4078)

65. WHYI was one of 5 radio stations in the market principally relied upon by McDonald's to reach the general audience. (Tr. 4086-87) McDonald's used WHYI for its only major station promotion in 1986. In this promotion, which was not charitable in nature, McDonald's distributed bumper stickers which WHYI would spot at random and award prizes. The bumper stickers bore the logos of both McDonald's and WHYI. (Metroplex Ex. 51, p. 3; Tr. 4079-81)

66. *Youth for Christ* - WHYI was involved in activities of Youth for Christ (YFC), a nonprofit Christian youth organization. From October 23 to November 1, 1986, YFC conducted its annual Haunted House events at locations in Broward and Dade Counties. These events were designed to promote two YFC programs, one directed to high school students and one to delinquent youth. YFC selected WHYI as the sponsoring radio station since it felt WHYI would "produce for us." (Metroplex Ex. 38, pp. 2-3)

67. WHYI provided promotional announcements of unspecified frequency and duration concerning the Haunted House events. During the events, the station also broadcast call-ins encouraging people to attend and offers of prizes for participants at the events. WHYI provided vans and station personalities at the locations of both events. There were banners with the WHYI logo at these events. (Metroplex Ex. 1, ¶ 56; Metroplex Ex. 38, ¶¶ 6-7; Tr. 3899)

68. *Job Expo* - WHYI was a sponsor and participant in the Dade County Public Schools Job Expo held April 14-18, 1986. The Expo was a combined Career/Job Fair for all 9th grade students and all 12th grade vocational program students in the Dade County Schools. WHYI supported the Job Expo with on-air discussion of the event, and WHYI staff members, including management and programming executives and personnel, spent time at the WHYI booth, which had the station logo, at the Fairgrounds, dispensing information concerning employment opportunities in radio. (Metroplex Ex. 1, ¶ 42) John W. Shaw, a Job Expo official, opined that "it was important to have WHYI at the fair because of the station's popularity among the teenagers who participated in the fair." (Metroplex Ex. 48, ¶ 4; Tr. 411)

69. *Summer Jobs for Youth Campaign '86* - WHYI also promoted the State of Florida Department of Labor and Employment Security's Summer Jobs for Youth Campaign '86. In addition to helping plan the campaign, WHYI broadcast an unspecified number of announcements regarding the Summer Jobs Hotline, co-sponsored the Summer Jobs for Youth '86 Kickoff Breakfast, secured corporate sponsorship by McDonalds, coordinated disc jockey appearances in connection with the campaign. (Metroplex Ex. 1, ¶¶ 43-45; Tr. 413-16) WHYI banners were hung outside five schools selected for Super Job Saturday. (Tr. 412-13) Anita Allbright, an official of Partners for Youth, which jointly organized the project, expressed the view that it was "very important for Partners for Youth to have WHYI involved to remind the children to participate in the summer jobs program." (Metroplex Ex. 56, ¶ 6; Tr. 4162-64)

70. *Other Jobs Programs* - WHYI staff members attended school Career Days and assemblies throughout 1986. These appearances, which were often accompanied by an

unspecified number of on-air announcements, included: the Parkway Middle School Career Days in Ft. Lauderdale; the South Florida Black Media Coalition's Job Fair; Ludlam Elementary School's Sports Career Day; the Coconut Creek High School's Career Month; the Lauderhill Middle School Career Day; the Taravella High School Career Day in Coral Springs; Broward County Community College's Employer Exploration Day; the Broward County Community College-North Campus Career Day; the Dade Employs the Handicapped Committee's Career and Opportunity Expo; and the Career Opportunity Day Conference sponsored by the Cuban National Planning Council and the Dade County Public Schools. WHYI also provided speakers to appear at the Hollywood Hills High School Career Series. (Metroplex 1, ¶¶ 46-47)

71. *Winterfest* - WHYI participated in Ft. Lauderdale's major civic event in 1986, the annual Winterfest and Boat Parade festival. Winterfest is a series of events in Ft. Lauderdale and surrounding communities held each year in December under the auspices of the Ft. Lauderdale Broward County Chamber of Commerce. (Tr. 3975) WHYI served as the official radio station for 1986 Winterfest and an official sponsor. In that capacity WHYI gave Winterfest approximately $50,000 worth of free broadcast time to promote the events and assist the public in getting to and from the major events. (Metroplex Ex. 1, ¶ 48) Ina Lee, the President of Winterfest, who expressed the belief that WHYI has been a major factor in the success of Winterfest, and the owner-publisher of a tourist magazine placed in Ft. Lauderdale hotels, acknowledged that Winterfest "could not have paid, possibly, for the amount of air time we got on Y-100." (Tr. 3983) Lee readily acknowledged that Winterfest attracts many tourists to the area. (Tr. 3977-79) WHYI also helped ease traffic by announcing the times of drawbridge openings, where to park, and the best public viewing areas for the parade. Ross served as Vice President and a member of the Board of Directors of the Winterfest and Boat Parade of Greater Ft. Lauderdale, and Anthony Novia served as a Winterfest Committee Chairman. They both attended or hosted some Winterfest planning meetings throughout 1986. WHYI air personalities made personal appearances at Winterfest events, and WHYI helped arrange appearances by two popular singing groups, the Commodores and the Four Tops, at Winterfest events. (Metroplex Ex. 1, ¶¶ 48-50; Metroplex Ex. 40)

72. WHYI's role as the official radio station of Winterfest resulted in an exclusive relationship whereby WHYI was the only radio station allowed to produce spots for Winterfest, place a banner on the Winterfest Beach Ball, and be identified in Winterfest publications. (Tr. 3885-86) The reason Winterfest employs official media is because it could not otherwise adequately publicize events. At one point, it solicited bids for the position; however, the three bids made did not promise more than WHYI had been providing. (Tr. 3989-90) Winterfest was primarily financed by donations. The Chamber of Commerce, the Ft. Lauderdale Area Board of Realtors, the Marine Industries Association, and the Broward County Tourism Development Council, all contributed to the half-million dollar budget. Ross acknowledged that one of the benefits of involvement in Winterfest was the exposure WHYI received. (Tr. 428-29)

73. *Spring Break* - Ross was a member of the Ft. Lauderdale Spring Break Task Force, a civic group that organized five weeks of Spring Break "Olympic Type" games to provide alternative entertainment for the thousands of college students who travel to Ft. Lauderdale for their spring break. The purpose was to promote a healthy environment for students and a clean image for Ft. Lauderdale and South Florida. The event was also a charitable project benefitting the American Cancer Society. As the official radio station of the 1986 Spring Break Games, WHYI supported the event with an unspecified number of PSAs and disc jockey discussion. WHYI disc jockeys and staff members hosted the Games, and the WHYI sales staff helped solicit $64,000 in sponsorship contributions, merchandise support, and school scholarships. (Metroplex Ex. 1, ¶¶ 63-64)

74. The Spring Break Task Force resulted from public concern as to the behavior of college students during the 1985 Spring Break. The Task Force conceived of the idea of having Olympic-like games on the beach in order to provide a wholesome activity for college students. (Tr. 3993-94) Ross explained that a significant group in the community believed that the influx of college students, known as spring break, should be discouraged. Actions designed to do so, such as building a wall on the beach, were taken, reducing the number of students from 250,000 to 75,000 or 80,000. Ross and other business leaders felt this was devastating the local economy. (Tr. 572-74) Ross acknowledged that the station had an interest in the health of the tourism industry and, more particularly, an interest in spring-break, since advertising money was spent by such companies as beer and sun tan companies during this period. (Tr. 590-93)

75. At the game site there was a tower sign which included the WHYI logo as well as banners near the game site with the WHYI logo. (Tr. 435) The games were sponsored by the Budweiser beer company, which ran a schedule of paid commercial announcements on WHYI promoting the games. (Tr. 436-37)

76. *Calle Ocho Festival* - WHYI supported and co-sponsored the annual Calle Ocho (Eighth Street) Open House in Miami on March 9, 1986. This was a street festival organized by the Kiwanis Club of Little Havana. (Metroplex Ex. 1, ¶ 52) WHYI had its van at the event and had a 40 by 20 foot stage, including a banner with the WHYI logo, as well as a television station and an airline. WHYI personalities wearing station tee shirts were present all day long. (Tr. 429-31) WHYI arranged for, but did not pay for, the appearance of a national recording artist, Expose', who appeared on the WHYI stage. (Metroplex Ex. 1, ¶ 52; Tr. 430) WHYI broadcast an unspecified amount of promotional programming relating to Calle Ocho and related events. (Metroplex Ex. 1, ¶ 52; Metroplex Ex. 54, pp. 3-4)

77. *Broward County Fair* - WHYI supported the Broward County Fair, held November 20-30, 1986, by an unspecified number of announcements and discussion on the air. (Metroplex Ex. 1, ¶ 53) WHYI also sponsored a concert by a recording artist, Jack Wagner, at the 1986 Fair. Wagner was selected and paid for by the Fair. WHYI provided an unspecified number of announcements promoting the concert. WHYI also provided advice concerning the Fair's concert program. (Metroplex Ex. 43, p. 3; Tr. 4220-21)

78. WHYI also participated along with the Fair and Pepsi-Cola Corporation in a give-away used to promote the Fair. WHYI was responsible for promoting and managing the contest. The details of the contest were printed on 8,000,000 Pepsi cans. The Fair used only one radio station and one television station in connection with this promotion. Winners were given an evening cruise and a Y-100 party night was held, attended by a station representative. (Metroplex Ex. 43, pp. 3-4; Tr. 4214-16)

79. WHYI also maintained a booth at the Fair for the duration of the event. The booth, which bore the WHYI logo, was staffed by station personalities who gave away prizes and played music. (Metroplex Ex. 43, pp. 3-4; Tr. 431, 4215)

80. *Hispanic Heritage Festival* - During November 1986 WHYI supported the Hispanic Heritage Festival, a month-long series of cultural activities, with an unspecified number of PSAs and visits of unspecified number by WHYI staff and vehicles. (Metroplex Ex. 1, ¶ 54)

81. *Super Pig Bowl* - WHYI was involved in the February 1986 Super Pig Bowl, a football game between the Broward County Sheriff's office and the Miami Police Department. This event had as its purpose the raising of funds for charity and creating a positive image of police. (Metroplex Ex. 1, ¶ 57; Metroplex Ex. 42, p. 2) WHYI broadcast an unspecified number of promotional announcements for the event, including interviews with participants and call-ins from members of the public encouraged by giving away prizes such as tee shirts and tickets. The station's staff also produced a "rap" record, the "Pig Bowl Shuffle" which was played on the air. On the day of the event, attended by about 10,000 people, WHYI provided musical entertainment, taped all music needed for the show, and synchronized it with the event. (Metroplex Ex. 42, p. 5; Tr. 4002-04) WHYI also broadcast an unspecified number of crime tips and press releases issued by the Sheriff's office and donated to a conference sponsored by it. (Metroplex Ex. 42, pp. 6-7)

82. *Auto Races* - WHYI was involved with the Miami Grand Prix and Nissan Indy Challenge auto races, sponsored by Miami Motorsports, Inc. (Motorsports). (Metroplex Ex. 1, ¶ 60; Metroplex Ex. 44) Motorsports, a for-profit corporation, devotes some of its profits to charity and engages in some charitable activities. (Tr. 4063-66) WHYI provided an unspecified amount of promotional programming for the auto races. (Metroplex Ex. 1, ¶ 60; Metroplex Ex. 44, pp. 3-4) WHYI and its personalities have participated in Motorsports' charitable events. (Metroplex Ex. 44, p. 3) In connection with the Grand Prix, Motorsports bought commercial time in addition to receiving free time from WHYI to promote its involvement in the event. (Tr. 4065-66) WHYI purchased a hospitality suite along the route of the race for $4,000. Such suites are typically used by corporations to entertain people with whom they do business. (Tr. 4052-56) During the race, WHYI broadcast an unspecified amount of information concerning traffic conditions and gave away tickets and prizes to listeners. (Metroplex Ex. 1, ¶ 60)

83. *Ft. Lauderdale Street Dance* - WHYI broadcast an unspecified number of PSAs on behalf of the annual Ft. Lauderdale Street Dance, a city event designed as the city's birthday party. It also maintained a stage at the event. (Metroplex Ex. 1, ¶ 61; Metroplex Ex. 39, p. 3)

84. WHYI supported the following community activities with PSAs and/or air discussion: local arts and cultural activities such as the Coconut Grove Playhouse Young Actors Workshop; Model City Cultural Arts Center; City of Lauderhill Arts and Cultural Festival, and the Hollywood Playhouse. (Metroplex Ex. 1, ¶ 62) WHYI provided unspecified "on-air and off-air support" to the Metro-Miami Action Plan and the South Florida Black Media Coalition. (Metroplex Ex. 1, ¶ 55)

85. *Highway Helper Program* - WHYI co-sponsored with American Motors dealers, 7-Eleven stores and Bell South Mobility a program whereby a jeep would drive around assisting stranded motorists. (Metroplex Ex. 1, ¶ 101) American Motors provided the jeep, 7-Eleven provided gas coupons for enough gas to get off the road and Bell South Mobility provided a cellular telephone to call in problems. WHYI provided two employees to drive the jeep for 4 to 8 hours per day. (Tr. 503-04)

86. As noted, *supra*, WHYI vans were sent to a number of charitable and community events. The most prominent van was the "Live Y'er." (Metroplex Ex. 1, ¶ 72) It has the station logo. (Tr. 398-99) The van contained a sound system and equipment to do a simulated or actual remote broadcast. The vans contained WHYI promotional items such as tee shirts and bumper stickers, as well as record albums and cassettes to be given away to those attending the events. (Metroplex Ex. 1, ¶ 72)

87. *Miami Lakes Technical Education Center* - WHYI supported the Miami Lakes Technical Education Center, a part of the Dade County Public School System, which conducts a radio broadcasting course and participates in the operation of noncommercial FM radio station WLRN to train students. (Tr. 33-34) During the renewal period WHYI broadcast an unspecified number of spot announcements for the Center, and WHYI staff members visited the Center to speak to the students about broadcasting. The station also hosted a visit by the students to WHYI. Ross served on the Center's advisory board and he, together with individuals from four other local stations, provided expertise to the program. (Tr. 4144-45) During 1986 WHYI employed two of the Center's graduates. (Metroplex Ex. 1, ¶¶ 65-66; Metroplex Ex. 55, ¶¶ 3-8; Tr. 4132-33, 4143-44)

(4) *WHYI's Promotional Policies*

88. In 1986, WHYI had a budget for station promotion of $756,000, including a prize budget of $234,000. (Tr. 601) This budget was for all station promotional activities, not specifically those related to charities and community service activities, although prizes given away at such events were part of the promotion budget. (Tr. 630) Decisions concerning involvement in charitable and community activities were made at WHYI promotion meetings or by the promotion staff. (Tr. 597-98)

89. WHYI placed significant value on getting its name known in the community. (Tr. 440) Ross explained that ratings are won by the fives and tens and not by the hundreds and thousands and hence exposure was of benefit both to the station and to its disc jockeys personally. (Tr. 586) The station encouraged its personalities to make public appearances as often as possible at events, not only of a charitable or community nature. (Tr. 439-40) Such appearances were viewed as part of their jobs. (Tr. 584-86)

90. The station also relied on contests to promote itself. Promotional contests unrelated to charitable or community service activities were ongoing virtually all the time. (Tr. 432-33) A contest was held in 1987 called "Expose the Y." This contest awarded a grand prize of $25,000 to

the listener who displayed the station's logo in the most original way, subject only to the limitation that no immoral or illegal acts would be considered. The winner was an individual who jumped on stage during a concert of the Miami Philharmonic Orchestra wearing an overcoat which he opened to display the station's logo. Ross did not know, and had not inquired, whether the individual had the Miami Philharmonic's permission to do so. He would have been denied his prize only if he had been arrested. (Tr. 440-44)

91. Ross also has a philosophy of assisting station advertisers during off periods in their business. For instance, if the hotel industry wished to promote lower rates during the slow month of August, Ross would support them with lower rates or other promotional assistance because "they're there for me other times of the year." (Tr. 591-92) Ross served as a director of the Broward County Chapter of the Florida Entertainment and Dining Association (FEDA), a trade association that addresses all issues of concern to the industry. (Metroplex Ex. 53, p. 2) Ross characterized FEDA as "an organization of local restaurant and night club owners designed to promote responsible drinking and to combat drunk driving." (Metroplex Ex. 1, ¶ 73)

(5) *WHYI Donations*

92. WHYI, at various times in 1986, made donations of money, albums, photographs, toys, disc jockey and van appearances, concert tickets and other items to local charitable events and organizations. WHYI donated a portable television set as a door prize for the Big Brothers/Big Sisters of Greater Miami, Inc. Black Leadership Breakfast in November 1986. (Metroplex Ex. 1, ¶ 75, att. 18)

(6) *Testimony of Members of the Public*

93. Testimony was given by 23 public witnesses from governmental, charitable, civic, and business organizations in the Ft. Lauderdale/Miami area (Metroplex Exs. 34-56):

94. *Betty Lou Randolph*, Chapter Director of the South Florida Chapter of the March of Dimes, commended WHYI for its sponsorship of the March of Dimes Walkathon fundraisers, discussed, *supra*. She expressed appreciation for WHYI's efforts, stating that WHYI "becomes a very part of the event on which it is working and inspires other people to do the same thing." (Metroplex Ex. 34)

95. *Jolae Brocato*, a Chemical Dependency Counselor with Spectrum Programs, Inc., a substance abuse program in Miami, praised WHYI's efforts to address South Florida's drug abuse problem through the station's "Here's Help" program and PSAs. Calling drug abuse one of the area's most serious social problems, Brocato commended WHYI "for its openness, sensitivity, and effectiveness in dealing with this critical need of our society." (Metroplex Ex. 35; Tr. 3847-54)

96. *Salvatore Charles Zocco*, Assistant Program Director at Here's Help, Inc., a nonprofit drug treatment program, described WHYI as "one of our major sources of support," not only for broadcasting the "Here's Help" program, which he produced, but for on-air fundraising assistance and on-site logistical support for the organization's activities. (Metroplex Ex. 36)

97. *Gregory Birkhimer*, Program Coordinator for the Muscular Dystrophy Association (MDA), classified WHYI as a "major contributor to the success" of the South Florida activities in connection with the Jerry Lewis National Labor Day Telethon for the MDA. Birkhimer cited WHYI's promotional support for the event, the participation of its staff in the telethon, its broadcast reports of the event, and its donation of equipment. He lauded WHYI for airing PSAs and reporting a significant news development about muscular dystrophy research. (Metroplex Ex. 37)

98. *Rick Englert*, Executive Director of Ft. Lauderdale Youth for Christ, Inc., commended WHYI for its support for the youth guidance program of his organization. Noting that WHYI "has a reputation for following through on its assistance to" charitable events, he expressed the view that WHYI's sponsorship had significantly increased attendance at the organization's events. He was laudatory of the station's responsiveness and cooperation. (Metroplex Ex. 38)

99. *Stephen C. Person*, Superintendent of Recreation for the City of Ft. Lauderdale, testified that during the renewal period WHYI "provided numerous valuable services to the City." He described the station's involvement in Winterfest, the Spring Break Games, and the annual Ft. Lauderdale Street Dance, opining that WHYI's reputation was that "it is always there when we need help." (Metroplex Ex. 38; Tr. 3919-22)

100. *Ina Lee*, President of Winterfest, praised the station for its on-air and off-air support of both Winterfest, an important civic event each year in Ft. Lauderdale, and the Spring Break Games. Lee characterized Y-100's services to Winterfest as extraordinary, going beyond the call of duty. (Metroplex Ex. 40; Tr. 3993)

101. *Kimary DeLaunay*, Adoption Counselor for the Humane Society of Broward County, testified that WHYI was an invaluable resource in enabling the Humane Society to educate the public about the availability of pets for adoption and finding homes for orphaned pets. She described the public response to her broadcasts on WHYI as "dramatic." (Metroplex Ex. 41)

102. *Elaine Miceli*, Community Involvement Specialist for the Broward County Sheriff's Office, commended WHYI for its promotional support of the "Super Pig Bowl" football game to raise funds for five different charities. She lauded the station for its concern in helping young people avoid drug abuse, saying "Y-100 has communicated a very clear message to young individuals who may have been on the verge of taking the wrong step with drugs." (Metroplex Ex. 42)

103. *Johnny F. Hudson*, Vice President of the Broward County Fair, testified that WHYI had done a "fantastic job" for the Fair and that the station's support had been "vital." He expressed the view that the station's promotional efforts and presence at the Fair helped to promote interest in the Fair and attract visitors. He described WHYI as very open and honest and as more accessible to him than any radio station in the market. (Metroplex Ex. 43; Tr. 4219)

104. *Robert A. Wild*, Marketing Director of Miami Motor Sports, Inc./Miami Indy, Inc., lauded WHYI for its promotional support of Miami's international car race to benefit several local and national charities and to increase tourism. (Metroplex Ex. 44)

105. *Marvin Hertz*, a Coordinator for the Greater Miami Heart Association, commended WHYI for its presence and participation in Heart Association's "Jump Rope for Heart" competition, designed to publicize the Associ-

ation's activities. Hertz was impressed by WHYI's cooperativeness, accessibility, and willingness to aid a charitable organization. (Metroplex Ex. 45)

106. *Denise Danches - Fisher*, a Program Coordinator for the American Lung Association, commended WHYI for its broadcast of announcements encouraging the public to participate in the organization's Christmas Seals fundraising promotion. (Metroplex Ex. 46)

107. *Lee David Zimmerman*, Public Relations Manager for the Coconut Grove Playhouse, expressed appreciation that WHYI had devoted two "Y's Rap" programs to interviews of Playhouse officials about that organization's educational activities and the demand for cultural activities in South Florida. (Metroplex Ex. 47)

108. *John W. Shaw*, an official of the Dade County Board of Education, described WHYI's participation in the 1986 Job Fair, expressing the view that the station had been extremely cooperative and supportive of the goals of the fair. (Metroplex Ex. 48)

109. *Alina E. Becker*, Director of Program Development of the Cuban American National Council, related that WHYI had participated in her organization's 1986 Career Opportunity Day Conference designed to inform and motivate low-income youths about possible career opportunities. She opined that, because WHYI is a popular radio station with young people, its involvement fostered a positive attitude in the students toward the program and helped make it a success. (Metroplex Ex. 49)

110. *Robin Peter E. Gutmann*, Inspector/Public Education Specialist with the Hollywood Fire and Rescue Department, commended WHYI for addressing significant fire prevention issues in its public affairs programming, noting that juvenile fire setting is a pressing problem in Broward County. (Tr. 4112-13) He stated that the format and style of the program was extremely effective in enabling the Department to communicate public safety information. He expressed appreciation that an entire "Y's Rap" program was devoted to his department, which enabled him to address a number of issues relating to fire prevention. He felt the program was successful based on the responses he received. (Metroplex Ex. 50)

111. *Michael Bell*, vice president of a Ft. Lauderdale advertising agency, testified that WHYI was very helpful in broadcasting PSAs for a United Negro College Fund fundraiser and publicizing Ronald McDonald House fundraisers and the Broward Sheriff's Office Youth Explorer recruitment effort. (Metroplex Ex. 51)

112. *Howard Cawein*, Executive Director of the Daily Bread Community Food Bank, commended WHYI for publicizing the activities of his organization through public affairs program discussion and informational announcements. He said that the station "is receptive to our requests and bends over backwards to help us." (Metroplex Ex. 52, ¶ 2)

113. *Mary Fanizzi*, National Promotions Director of Showplace, Inc., which operates Penrod's on the Beach in Miami, testified that "if there's a cause to be served, Y-100 will be there serving it." She cited the station's campaign against drunk driving. (Metroplex Ex. 53)

114. *Rafael V. Licea*, Executive Director of the Carnaval Miami Project of the Kiwanis Club of Little Havana, praised WHYI for serving as a bridge between the Hispanic community and the Anglo and Black communities at the Carnaval Miami festival, an Hispanic festival whose purpose is to bring together the three major cultural groups and promote mutual understanding. He cited the station's promotional announcements for Carnaval events, including the Calle Ocho Open House, and its presence at the festival, which drew many Black and Anglo visitors. (Metroplex Ex. 54)

115. *Bob Gaynor*, Radio Broadcasting Instructor at the Miami Lakes Technical Education Center commended WHYI for its support of the Job Fair and the radio broadcasting instruction program run by the Center. (Metroplex Ex. 55)

116. *Anita Allbright*, Development Resource Specialist for Partners for Youth, credited WHYI for having played an active role in making her organization's Summer Jobs for Youth '86 campaign a success. She cited WHYI's participation in planning the program, its on-air promotional support for the program, and its on-site presence at job registration sessions, which, she felt, made the experience more appealing and positive for the youth. (Metroplex Ex. 56)

(7) *Letters of Appreciation*

117. During the renewal term, WHYI received letters from more than 90 local charitable, educational, governmental, religious, and community service organizations expressing their positive reaction to WHYI's programming, public service activities, and donations. (Metroplex Ex. 1, ¶ 76 and att. 18) In addition, WHYI received numerous favorable letters from individuals responding to the station's service to the public. (Metroplex Ex. 1, ¶¶ 87-88; att. 23, 2; att. 26; att. 36)

118. Lastly, the record contains no evidence of any regulatory violations by WHYI during the renewal term.

C. *Southeast Florida Broadcasting Limited Partnership (Southeast)*

(1) *Ownership Structure*

119. Southeast is a limited partnership organized under the laws of Delaware and registered to do business in Florida. Southeast's ownership structure is as follows (Southeast Ex. 1):

Name	Status	Equity
CMNY Capital,	L.P. Limited Partner	24.0%
Bernard L. Perry	Limited Partner	12.0
Alan J. Courtney	Limited Partner	12.0
Arthur B. Baer	Limited Partner	10.8
Richard A. Levin	Limited Partner	10.8
Melvin L. Katten	Limited Partner	6.0
Louis A. Holland	Limited Partner	6.0
Kenneth S. Grossman	Limited Partner	6.0
Gerald B. Cohen	Limited Partner	6.0
Gloria R. Butler	General Partner	4.0
Joan Baer	Limited Partner	2.4

120. The Certificate and Limited Partnership Agreement of Southeast (the Agreement) provides at Section 10 in pertinent part that (Southeast Ex. 12):

> Except as expressly stated herein, all decisions of the Partnership shall be made by the General Partner, and the Limited Partners shall not participate in the management of the Partnership affairs.

121. Section 13(a) of the Agreement provides in pertinent part:

> No Limited Partner shall participate in the control of the Partnership business or have any power to bind the Partnership in any contract, agreement, compromise or undertaking; . . .

122. Section 13(e) provides:

> No Limited Partner shall act as an employee, agent, contractor of [sic] consultant of the Partnership in connection with the Partnership's media enterprises nor shall any Limited Partner communicate with the General Partner or the Partnership on matters pertaining to the day-to-day operations of any media enterprise.

123. Pursuant to Section 22 of the Agreement, the Limited Partners may vote to remove the General Partner only in the event of the institution of bankruptcy proceedings against the General Partner; in the event the General Partner is adjudicated a bankrupt or insolvent; or an adjudication of incompetence of the General Partner by a court of competent jurisdiction. (Southeast Ex. 12, p. 16) The only circumstances in which limited partners may vote are on questions of the dissolution or winding up of the partnership; the sale, exchange, lease, mortgage, pledge or other transfer of all or substantially all of the partnership assets other than in the ordinary course of business; a change in the nature of the business; or the removal of the General Partner pursuant to Section 22. (Southeast Ex. 12, pp. 11-12)

(2) ***Integration of Ownership and Management***

(a) ***Southeast's Integration Proposal***

124. Gloria R. Butler (Butler), Southeast's General Partner, will devote forty (40) hours per week to the day-to-day operation of Southeast's proposed station as its General Partner. She will ordinarily work at the station Monday through Friday, but work Saturday and Sunday if her duties require. She will direct the operation of the station, including establishing and implementing policies, hiring and firing, and supervising personnel. She will oversee programming, technical operations, sales and accounting, and will be responsible for administering the Equal Employment Opportunity Program. (Southeast Ex. 2, p. 4)

125. Butler is a Black female. She has resided in Coral Springs, Florida, which is within the proposed city grade contour of Southeast's proposed station, since 1982. (Southeast Ex. 2, pp. 1-4)

126. Butler was born in Grambling, Louisiana, and graduated from high school in Grambling. She received a BS degree from Grambling College in 1962. Upon graduation from college, she became a teacher and served in various teaching capacities until 1982, when she and her husband moved to Coral Springs where through a corporation, Cherikel, Inc., they became the franchisee for a McDonald's restaurant located in Pompano Beach. She is a 48 percent stockholder, Vice President, Treasurer, and Director of Cherikel, Inc. Her husband is a 52 percent stockholder, President, and a Director of the corporation. (Southeast Ex. 2, p. 1; Tr. 1409)

127. In 1984, Butler and her husband organized Wilenca, Inc., which is the franchisee for a McDonald's restaurant located in Ft. Lauderdale, Florida. She and her husband hold identical ownership and offices in both corporations. Since May 1987, Wilenca corporation also has operated a second McDonald's restaurant in Ft. Lauderdale. (Southeast Ex. 2, p. 2)

128. Butler has engaged in civic activities within the service area of Southeast's proposed station. One facet of her duties at Cherikel and Wilenca is to assist nonprofit organizations in raising funds. She was involved in arranging for a hot cakes dinner in 1984 which helped raise funds to send a local school girl to the Olympic Training Center in Colorado Springs. In 1985, she was involved in raising funds for an elementary school in Pompano Beach through another hot cakes dinner. Since 1984 she has been actively involved in the Partners in Excellence Program in a local elementary school, where she served as a volunteer math teacher. (Southeast Ex. 2, p. 2)

129. Since 1982, she has participated in volunteer activities in the elementary school attended by her children. She chaperoned field trips and helped teach reading. She also participated in the annual career day activities of the Broward County School Board. She received a letter of appreciation thanking her for her assistance. (Southeast Ex. 2, p. 3) She also received a Certificate of Appreciation in 1986 from the staff and students at Alphabet and Forest Academy. This was awarded for her volunteering with the book fair. In 1985 and 1986, she participated as a judge in the oratorical contest sponsored by the Sistrunk Historical Festival Oratorical Committee. She also assisted in fundraising by making a corporate donation and helping secure other donations from businesses in the area. In 1986 she participated in a celebration of Black History Month at a local elementary school. Since 1983, she has been a member of the Markham Elementary School Advisory Committee. Since 1982, she has been a member of Coral Springs High School PTA. Commencing in 1982, she was a member of the Coral Springs Elementary School PTA. Commencing in 1985, she was a member of the Coral Springs Middle School PTA. (Southeast Ex. 2, p. 3)

130. For the 1984 and 1985 school year she was a member of the North Area Advisory Council for Schools in the Northern Section of Broward County. She also served on the textbook selection committee in 1985 for Broward County social studies textbooks. (Southeast Ex. 2, p. 4)

131. In the event Southeast is successful in this proceeding, Butler proposes to relinquish all of her day-to-day activities at Cherikel and Wilenca, the McDonald franchises. She averred that she would no longer be involved on a day-to-day basis in the management of either company. (Southeast Ex. 2, p. 4)

132. Butler acknowledged that she has no background in broadcast communications; has never worked at a broadcast station; has never attended a broadcast convention or seminar; has never subscribed to any broadcast trade journals, and has never reviewed any broadcast periodicals or literature. (Tr. 1412) Except for one visit to a radio station in 1983 to produce a commercial, she has never been inside a broadcast station. (Tr. 1505)

(b) ***History re Initiation and Formation of Southeast***

133. *Initiation of Project By Counsel* - The communications law firm of Cohen & Berfield has, for over 20 years, represented Bernard L. Perry (Perry) a limited partner, in communications matters. (Tr. 2419-22) Perry has retained

Cohen & Berfield for legal representation of his broadcast and cable television interests and has encouraged the firm to bring to his attention investment opportunities in the communications field. (Tr. 2433)

134. In the spring of 1986, Morton L. Berfield (Berfield), a partner of the law firm, informed Perry of an opportunity to invest in a venture that the law firm was "attempting to put together" to apply for the license of WHYI. (Tr. 2432-33) Perry understood that he was the first prospective investor Berfield contacted, and that if the project went forward Cohen & Berfield would represent the venture. (Tr. 2433-34) In a follow-up conversation, Berfield told Perry that his firm would find someone to manage the station, an individual who was a minority local resident, since, as Berfield advised, such attributes would be "a plus" to the Commission. (Tr. 2440-41)

135. Perry, in turn, recruited two other investors, Arthur B. Baer (Baer) and Alan J. Courtney (Courtney). (Tr. 2435-36, 2634-35, 4325-28) Courtney was Perry's friend and neighbor in Palm Beach, Florida. (Tr. 4322-23) Then either Perry or Baer enlisted Robert L. Davidoff, one of three equal general partners of CMNY, a small business investment company (SBIC). (Tr. 2435-36, 2637-38, 2826-28, 2854-67, 3311) During their initial conversations, Messrs. Perry, Courtney, Baer, and Davidoff (on behalf of CMNY), hereinafter referred to as the Perry group, agreed that, as a group, they would take 75% of the enterprise, with Perry and Courtney each being given half of his share (*i.e.*, 6%) as a "promotional interest" or "finder's fee" in return for Perry's "bringing the parties together" and "acting as . . . an investigator and helping to organize it initially." (Tr. 2443-44, 2452, 2637-38, 3312-13) They understood that Cohen & Berfield would find other investors to take the remaining 25%. (Tr. 2443-44)

136. Messrs. Perry, Courtney, Baer, and Davidoff had a pre-existing relationship in connection with Leisure Market Radio, Inc. (LMRI) and Stations WADK(AM), Newport, Rhode Island, WIVI, St. Croix, U.S. Virgin Islands, and WOTB(FM), Middletown, Rhode Island. Perry was introduced in 1984 or 1985 to Baer by a mutual friend for the purpose of interesting Perry in investing in SMRI, which owned WOTB and WIVI. Baer's SBIC, Unicorn Group, was an investor in LMRI and Baer was a director and officer in the company and its licensee subsidiaries. At about the same time, Perry was introduced to Davidoff, whose SBIC, CMNY, had been interested in investing in LMRI by Baer. (Tr. 2630-32, 2828-40) Baer and Davidoff were personal friends, having known each other since 1981 or 1982 as a result of a joint investment by their companies. (Tr. 2631-34) Through Baer's efforts, Perry subsequently became Acting President and a consultant to LMRI. Perry and Courtney purchased WADK, and later they purchased WOTB from LMRI. Funds for operation of both stations were advanced by CMNY and Unicorn. (Tr. 2428-29) The two SBIC's are currently negotiating with Perry to purchase interests in his licensee companies. (Tr. 2631-34)

137. Baer is a general partner of two SBIC's known collectively as the "Unicorn Group" or "Unicorn." (Tr. 2623-26) Initially, Baer contemplated that Unicorn would invest in the WHYI venture. (Tr. 3309-10, 3346-47; Metroplex Exs. 25, 26) However, Unicorn eventually decided that the project was not suitable for a small business investment company because it was "a straight bet on a lawsuit." (Metroplex Ex. 27) As noted, *infra*, Baer decided to invest in the project personally and to split the interest reserved for Unicorn with his wife, Joan N. Baer, and his close friend and attorney, Richard A. Levin, who had been investing with him for at least 15 years. (Tr. 3356-62)

138. Cohen & Berfield proceeded to find investors for the remaining 25%. Lewis I. Cohen (Cohen), another partner of the law firm, recruited Louis A. Holland (Holland), whom Cohen had previously recruited to be a principal of license renewal challengers represented by Cohen & Berfield for stations in Chicago and Los Angeles. (Tr. 3581-82, 3586-91) Cohen also enlisted Melvin L. Katten (Katten), a Chicago attorney and a close friend, whom he had known for 15 years and whom he had also previously recruited to be a principal of the Chicago and Los Angeles renewal challengers. (Tr. 4264-75) Holland, in turn, enlisted his friend and business partner, Kenneth S. Grossman (Grossman). (Tr. 3580, 3582-85) Lastly, Grossman recruited his long-time close friend Gerald B. Cohen.[5] (Tr. 3408, 3417-18, 3436-37) After conferring with Cohen & Berfield, Messrs. Holland, Katten, Grossman, and Gerald B. Cohen, hereafter referred to as the Chicago Group, decided in May 1986 to divide the remaining 25% interest in the venture equally among themselves. (Metroplex Ex. 85, pp. 12-15, Tr. 3591-93, 4273-74)

139. With the group in place, counsel Cohen proposed that a limited partnership be created, and he drafted a limited partnership agreement. (Tr. 2448-49; Metroplex Ex. 22) The draft agreement provided for a general partner with a 4% "carried" (*i.e.*, free) interest and for a division of equity previously suggested by Perry and agreed upon by Messrs. Perry, Baer, and Davidoff. (Tr. 2870-81, 2883-84; Metroplex Ex. 22) Cohen, by letter dated May 13, 1986, sent the draft limited partnership agreement to Messrs. Perry, Courtney, Davidoff, Baer, Holland, and Katten. As detailed, *infra*, Butler had not agreed to participate at this time.

140. *The May 16, 1986, Meeting in New York* - On May 16, 1986, attorneys Cohen and Berfield met in New York with Perry, Baer, and Davidoff to discuss the venture. One purpose of the meeting was to introduce counsel to Davidoff and Baer to "see whether the chemistry was going to be right." The participants discussed the form of the partnership structure and the need for a "very strong general partner." They also discussed other aspects of the venture, including financing and the fee arrangement for Cohen & Berfield. It was agreed that counsel would receive a "retainer" capped at $200,000. (Tr. 2453-54, 2939, 3108-09) Counsel told them that after they advanced the first $50,000 of the $200,000 total, the limited partners could abort the venture and cut their risk if counsel decided it was not viable to go forward. (Tr. 2924-28) The prospective partners may have been told at the meeting that Cohen & Berfield would get a $500,000 bonus if Southeast's application was granted, but Perry is not certain. (Tr. 2455)

141. In response to Baer's "great concern" that the investment was speculative and his inquiry whether there "may be some salvage to our money" if they didn't win the license, counsel told the investors at the meeting that the firm had represented renewal challengers in the past and that some of their efforts had been "successful." Counsel defined success as winning the license or "an arrangement for a financial settlement" in excess of what had "actually been expended." (Tr. 3339-40) Cohen stated

that the value of the WHYI license was about $20 million. (Tr. 2454-55) He explained that there were "intermediate outcomes short of winning the license," including a buy-out of Southeast and a discounted purchase of WHYI. Baer recalled that counsel had explained that acceptance of such a settlement offer would be subject to a vote in which the limited partners could participate. (Tr. 3341-43) In response to repeated questions, the attorneys expressed "a strong feeling" that "we had a strong case" and that the investors "wouldn't lose money on it and we should make the investment." (Tr. 3343-44)

142. The investors agreed at the May 16 meeting that Davidoff's firm, CMNY, would provide a loan letter for the applicant. Cohen proposed that the letter be in the amount of $600,000, and the investors agreed to that amount. It was understood that Cohen & Berfield would draft a loan letter "suitable for FCC purposes." (Tr. 2463-64)

143. At the May 16 meeting with Perry, Baer and Davidoff, Cohen recommended that Southeast have one general partner, who would receive about 4% of the equity as a "carried interest" or "sweat equity." (Tr. 2456-57, 2484) There was discussion to the effect that local residence and minority status would be desirable prerequisites for the general partner because those factors would earn preferences for Southeast's application. (Tr. 2440-41, 3318, 3320) As detailed, *infra*, Cohen had preliminarily contacted Gloria Butler in early May and arranged to meet and discuss the venture with her on May 20 in Miami. (Metroplex Ex. 21; Tr. 2017-20) Those present were told that she was Black. They authorized Cohen to proceed with the May 20 interview and "recommend yes or no as to whether we should go forward, and ourselves, interview the applicant." (Tr. 2458-59, 3317-18) Perry and Davidoff had reviewed a resume that Butler had sent to Cohen on May 5, which reflected no experience in communications. (Tr. 2459-60; Metroplex Exs. 14, 22) Nobody present expressed concern about Butler's lack of broadcast experience. (Tr. 2461-62, 2921-22, 3319-20)

144. Baer summarized the discussion at the May 16 meeting and related conversations with Perry in a memorandum to his Unicorn colleagues. The memorandum stated, in pertinent part, as follows (Metroplex Ex. 25, pp. 1-2):

> A law firm specializing in FCC matters (Cohen & Berfield) is representing a group of investors trying to obtain a radio station license. They will be applying in opposition to the present holding. The value of the license is believed to be about $20 million.
>
> Bernie Perry brought us into this deal and we are splitting the available percentage with CMNY. CMNY and the two Unicorns together will each put up $62,500, or 31.25% of the case for 24% of the profits. The difference represents the promotions to the General Partner (4%) and to Perry (20%).
>
> The attorneys are capping their fees at $200,000. Any more, they bear. They feel that legal costs will run at least $250,000, so they anticipate they are kicking in $50,000 if the legal process runs its full course. Their cuts in the event of various outcomes are:
>
> 1. If we lose, they get nothing more.
>
> 2. If the case is settled for cash, the attorneys get a bonus of 15% of any funds above the capital contribution.
>
> 3. If the case is settled by the owners selling the license to us at some heavily discounted value, then the lawyers get $250,000.
>
> 4. If we win the license, the attorneys get a bonus of $500,000.
>
> The attorneys advise us that winning takes a year at the FCC and two years in the appeals process.
>
> The attorneys believe the case is very strong here. The present license holder lost an FCC trial last year and received only a one-year probabtional [sic] extension.
>
> The attorneys will spend the first $50,000 assembling evidence and interviewing witnesses. If at this stage the case looks weak, we can abort it there.
>
> Their assessment is: "We're not saying this is a piece of cake, but it looks like there's a solid enough basis to mount a challenge. I can't imagine you could lose a nickel on this."

145. *The Retainer Agreement* - Based on the discussion at the May 16 meeting, Cohen & Berfield prepared a proposed retainer agreement and sent it on May 21, 1986, to Perry, Courtney, Davidoff, Baer, Gerald B. Cohen, Holland, Katten, and Grossman. As detailed, *infra*, Butler had not agreed to participate at this time (Metroplex Exs. 19, 20; Tr. 2058, 2489) The transmittal letter outlined the schedule of payment for the partnership's initial capital call and asked for the return of executed retainer agreements and checks made payable to Cohen & Berfield in the amounts specified. (Metroplex Ex. 20, pp. 1-2) The retainer agreement proposed that Cohen & Berfield perform legal services in connection with the preparation and prosecution of the Southeast application to an "absolutely final decision" or settlement. Payment for these services would be made in installments: up to $50,000 for Phase I, including the preparation of a limited partnership agreement and the application and the conduct of "all necessary investigations;" up to $150,000 for Phase II, including the prosecution of the application through the hearing and all appeals. Each investment unit would be required to pay 12.5% "now," 12.5% due thirty days after filing of the partnership papers, 25% due fifteen days after hearing designation, and the remaining 50% due as subsequent calls were made throughout the hearing process. In addition, a bonus arrangement for Cohen & Berfield was specified: 15% of a buy-out after return of capital contributions in consideration for dismissal of Southeast's application; $500,000 if Southeast won the construction permit, to be paid when the grant became a final order, and $250,000 in the event Southeast bought WHYI at a discount. The prospective partners were asked to sign and return the agreement. (Metroplex Ex. 19, p. 2) Soon after the retainer letter was distributed, some of the investors

signed and returned it to Cohen & Berfield with their initial capital contributions. The payments of Davidoff (May 28), Holland (May 30), Gerald B. Cohen (June 2), and Grossman (June 9), were received by Cohen & Berfield during the period May 28-June 9, 1986. The others followed during the period July 8-August 1, 1986. (Metroplex Ex. 92; Tr. 2950-51, 2969, 4371)

146. The partners have met their obligations to make financial contributions to the partnership as follows (Metroplex Ex. 75):

	Initial Call	30 Days After Limited Partnership Agreement Filed	15 Days After Designation	Subsequent Calls	Total Contribution
CMNY	$7,812	$7,814	$15,625	$31,250	$62,500
Perry	1,562	1,563	3,125	6,250	12,500
Courtney	1,562	1,563	3,125	6,250	12,500
A. Baer	7,812	3,516	7,032	14,062	32,422
Levin	- 0 -	3,516	7,032	14,061	24,609
Katten	1,562	1,563	3,125	6,250	12,500
Holland	1,562	1,563	3,125	6,250	12,500
Grossman	1,562	1,563	3,125	6,250	12,500
G. Cohen	1,562	1,563	3,125	6,250	12,500
J. Baer	- 0 -	781	1,562	3,125	5,468
Butler	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
	$24,996	$25,004	$50,001	$99,998	$199,999

147. *Recruitment of Butler by Counsel* - Cohen learned of Butler indirectly through Lee Dunham (Dunham), a McDonald's franchisee, who was one of his broadcast clients. Dunham had recommended another McDonald's franchisee in Miami named Valencia Nichols. When Cohen contacted Ms. Nichols, she was not interested; however, she suggested he call Butler, who was a friend of hers.

148. Cohen called Butler in early May 1986. He told her that a group was forming to apply for WHYI and that it needed a general partner. He explained that he would be the attorney for the group. (Tr. 2017-20) Butler told Cohen that she would think about it and get back to him. (Tr. 2019) On May 5, she sent him a resume that he had requested in a telephone conversation the previous week. As job experience, the resume listed elementary school teaching positions and involvement with McDonald's franchises. (Metroplex Ex. 14) On May 12 Cohen wrote Butler to confirm an interview meeting in Miami on May 20. (Tr. 2032; Metroplex Ex. 21) Before or at that meeting, Butler made clear to Cohen that she was not willing to invest any money in the WHYI venture "because I did not have money to invest in something other than the businesses we [she and her husband] were currently involved in." (Tr. 2033)

149. On May 20 Cohen interviewed Butler in Miami. He asked about her background, her present duties with the Butlers' business, and other "basic" questions. Butler asked Cohen about the others in the venture, and he told her that they were men of "substantial means" who were willing to commit if a general partner could be located.[9] (Tr. 2039-40) At the conclusion of the interview, Butler and Cohen agreed that Cohen would arrange a meeting with the "major investors," who she understood were Baer and Davidoff. (Tr. 2052-54)

150. On June 12, 1986, Butler traveled to New York for the June 13 meeting with the limited partners. Cohen's office arranged and paid for Butler's trip. All details were handled by the law firm, which prepaid her plane ticket, made her hotel reservation, and told her how to get to the hotel from the airport. (Tr. 2072-73; Metroplex Exs. 20, 23, 24)[10]

151. *The June 13, 1986, Meeting in New York* - Present at the June 13 New York meeting were Cohen, Butler, Perry, and Davidoff.[11] This is the only occasion when any of Southeast's limited partners ever met Butler, except for a chance encounter she later had with Perry at the hearing. (Tr. 2078-79, 2226, 2247, 2253-54, 2285-86, 2504) The meeting lasted about three hours. (Tr. 2602) Perry and Davidoff interviewed Butler with regard to her background and history, including her McDonald's businesses. (Tr. 2115-16, 2501-02, 2973-75) There was no discussion of her knowledge of WHYI's operations, the staffing or format of the proposed station, or the station's transmitting facilities and how they would be obtained. (Tr. 2115-16) She was asked "generally" about her financial condition, but no effort was made to determine whether she could afford an investment in Southeast or whether she could sustain her liability as a general partner. (Tr. 2125-26, 2501-02) Butler learned at the meeting that Perry had a "radio interest in Connecticut." (Tr. 2079) She also gained a "general understanding" that "some of these people knew each other from previous relationships," but she had no understanding of the specifics of those relationships. (Tr. 2080- 81) She did not ask and was not told by Cohen until later how Perry, Baer, and Davidoff came to be involved in Southeast. (Tr. 2081-82) Butler was given a draft partnership Agreement that assigned her a 4% interest. Perry and Davidoff proposed this figure to her during the meeting. (Tr. 2107-09, 2497-98)

152. At the end of the interview, Cohen, Perry, and Davidoff met alone and discussed Butler's qualifications. (Tr. 2137, 2978) They then decided to offer her the position of general partner, and they reconvened with her to extend the offer. (Tr. 2136-37, 2497-98, 2978-80) Butler was asked to review the partnership and retainer agreements and, if she decided to accept the offer, sign and return them. Within two weeks of the June 13 meeting, she signed and returned the limited partnership agreement and the retainer agreement. (Tr. 2151-54)

153. Prior to signing the agreement, Butler sought advice from her personal counsel. (Tr. 2090) She understood from these discussions with her counsel that she had absolute liability for the debts of the partnership, except insofar as Section 20 of the Agreement protects her to the extent of the assets of the partnership. (Tr. 2141-42)

154. At no time did Butler propose any alternative to the arrangement offered to her. Nor did she suggest any changes in either the partnership agreement or the Cohen & Berfield retainer agreement. (Tr. 2140-41)

155. *Butler's Involvement In The Partnership Affairs* - As noted, *supra*, the structure of Southeast's financing, namely, the $600,000 loan, was agreed to by Cohen and Davidoff prior to Butler's agreeing to join the partnership. On July 24, 1986, Cohen sent Davidoff a draft loan commitment letter identical to that ultimately relied upon by Southeast. (Metroplex Ex. 17, pp. 1, 2; Southeast Ex. 3, att. 3) A copy of the draft was sent to Perry, but not to Butler, who had become Southeast's general partner a month earlier. Cohen's transmittal letter instructed Davidoff that if the draft was acceptable he should have it retyped on CMNY letterhead, signed, and returned to Cohen. (Metroplex Ex. 17, p. 1) Davidoff signed the CMNY loan commitment letter, addressed to Butler, on July 28. (Metroplex Ex. 16, p. 2) Butler, who offered no

suggestions for changes in the loan letter, had no understanding why Cohen originally sent a draft to Perry but not to her. (Tr. 2233, 2236-38)

156. Paragraph 12 of the partnership agreement requires the prior written consent of both Butler, as general partner, and Southeast's counsel for transfers of limited partnership interests. (Southeast Ex. 12, p. 8; Tr. 2248-49)[12] By letter dated July 11, 1986, Baer notified counsel that he wished to transfer portions of his interest to Joan Baer, his wife, and Richard Levin (Levin). (Tr. 2257-58) Without consulting with Butler, counsel told Baer that the proposed transfer would be fine, and he promised to circulate papers formalizing the split. (Tr. 3361-62) Baer gave counsel only general background information about the employment status of the new investors and told him nothing of their financial condition. (Tr. 3376-78) The transfer of interests was effectuated in August 1986. (Tr. 3379-80; Metroplex Ex. 30) Butler did not know why Baer was making the transfer and knew nothing about it except what Cohen told her; namely, that Baer "transferred a portion to his wife and best friend . . . ." (Tr. 2252) While she understood that Mrs. Baer and Levin were assuming Baer's obligations with respect to the transferred interest, she knows nothing about the financial qualifications or net worth of either of them. (Tr. 2253-55) She did not recall receiving notification in writing of the proposed transfer from Baer, nor did she know whether the other partners were notified or even whether the partnership agreement requires notification.[13] (Tr. 2255-56) Similarly, Davidoff could not recall that CMNY notified Butler of its conversion from a corporation to a limited partnership on December 31, 1986, even though Davidoff conceded that such notification was required. (Tr. 2830-32)

157. The first partnership capital call, pursuant to paragraph 7(a) of the partnership agreement, was made by counsel in his May 21, 1986, letter forwarding the retainer agreement. The monies were paid in to counsel's office. Subsequent calls under subparagraphs 7(b)-(e) were made by letters prepared in counsel's office and mailed to Butler for signature and distribution. All calls were precipitated by counsel's legal bills, except the last call in July 1987, which was made in response to counsel's advice that full payment of the $200,000 total capital contribution would aid Southeast in defending against a petition to enlarge issues as to Southeast's financial qualifications. (Tr. 2241-44)

158. Butler set up Southeast's bank account and transferred approximately $198,000 of the $200,000 contributed by the limited partners to counsel pursuant to the retainer agreement for legal fees and prosecution-related expenses, such as consultant fees and travel costs. (Tr. 2259-60, 2279-80, 2285) Butler had "no voice" with respect to this money. (Tr. 2259) She has reimbursed herself out of partnership funds for "small purchases," including postage and Federal Express charges, drawing on the approximate $2,000 balance left in the Southeast bank account on counsel's advice to cover "incidental expenses." Butler has probably spent less than $1,000 on behalf of the partnership. (Tr. 2258-60)

159. Butler explained that she has never called a partnership meeting pursuant to paragraph 19 of the agreement (Tr. 2247; Southeast Ex. 12, p. 14), because "[t]here is no business being conducted at this time or no developments that have warranted a meeting." (Tr. 2285-86)

160. Butler hired and supervised Southeast's accountant. She spoke to about 20 community leaders in connection with the preparations of Southeast's application. (Tr. 2281-82) She taped programming of WHYI. (Tr. 2280) She has prepared an annual report and accounting documents required by the agreement. (Tr. 2282) She drafted the programming and EEO portions of the application. (Tr. 2266)

161. *Butler's Participation In The Operation of the Proposed Station* - The partnership agreement provides that "the General Partner shall . . . be employed at the station . . . in a full-time management position." (Southeast Ex. 12, p. 8) The "Statement Re Integration Proposal," submitted in response to the Presiding Judge's *Order* (FCC 87M-684), released March 27, 1987, represented that Mrs. Butler, "the General Partner of Southeast Florida, proposes to be integrated into the day-to-day operation of the proposed station" on a full-time basis. (Metroplex Ex. 66)

162. The integration proposal further represented that Butler would "direct the operation of the station, including establishing and implementing policies, hiring and firing and supervising personnel." Also, she would oversee programming, technical operations, sales and accounting, and be responsible for the EEO program. (Metroplex Ex. 66)

163. Butler, in her written direct testimony, also represented that as general partner she would direct the operation of the station and listed the same functions as set forth in the integration statement. (Southeast Ex. 2, p. 4) Neither Southeast's limited partnership agreement (Southeast Ex. 12), nor Southeast's "Statement Re Integration Proposal" filed April 6, 1987 (Metroplex Ex. 66), nor Butler's written direct testimony (Southeast Ex. 2) specified what managerial position she would hold at the station. When asked at the hearing whether the proposed station would have a General Manager, she responded that she would function as the General Manager. (Tr. 1471-72) However, she could not explain why that position was not specified in Southeast's partnership agreement, the integration statement, or her written direct testimony. (Tr. 1473-74, 1477-79) Butler has never discussed with counsel or her partners the salary that the General Manager would receive, and she has never attempted to ascertain what amount of compensation would be consistent with the compensation formula for the General Partner station managerial duties provided in paragraph 11 of the partnership agreement. (Tr. 1555-60, 2110; Southeast Ex. 12, p. 8) However, as noted, *infra*, she approved the operating budget which specified a yearly salary for the General Manager of $75,000. (Southeast Ex. 3, att. 1, p. 2)

164. Perry, during his deposition, stated that at a meeting on September 14, 1987, among Lewis Cohen and members of the Perry Group (Baer, Davidoff, and himself), the investors had had "the same discussion we have had on and off: that she [Gloria Butler], as a general partner, would have complete management control, but she would appoint a general manager." Perry, at his deposition, made clear that Butler would not hold the position of General Manager on any basis. (Tr. 2471-75)

165. At the hearing, Perry claimed that he was "obviously wrong" at his deposition because the partnership agreement gives Butler "the right to manage the business. Whether she's called general manager or general partner is a moot point." (Tr. 2476) He conceded that counsel had brought this to his attention by reviewing the agree-

ment with him. (Tr. 2476-77) Later at the hearing, Perry acknowledged that "[w]e did have a discussion like that [on September 14, 1987], but obviously we were in error." (Tr. 2479)

166. According to Baer, the question of who would be General Manager "was discussed but it was never specifically settled upon." Either counsel or Perry told him that Butler might hold the position, but she might not. (Tr. 3400) Davidoff, when asked at his deposition who the General Manager would be, responded: "We have not made that decision yet." He confirmed that testimony at hearing. (Tr. 2981-82) He further testified at his deposition that the General Manager would not be selected until the license was awarded to Southeast. (Tr. 2986-87) However, on the eve of his hearing testimony he was told by Southeast's counsel that Butler, as General Partner, would appoint herself as the General Manager. (Tr. 2980-89, 3168) It should be noted that Davidoff emphasized that CMNY has "never done a deal without competent management" and that, before investing, CMNY "would have to be satisfied with the management and the involvement of the management and the role of the management." (Tr. 2887)

167. *Butler's Present Business Activities* - As set forth, *supra*, Butler and her husband jointly own and operate three McDonald's-franchised stores on a full-time basis in Pompano Beach and Ft. Lauderdale through two corporation, Cherikel, Inc., and Wilenca, Inc. These are the only businesses she has ever owned or operated. (Southeast Ex. 2, pp. 1-2; Tr. 1412-14) Butler holds 48% of the stock and is a Vice President, Treasurer, and director of each corporation. Her husband owned 52% of the stock and is President and a director of each company. There are no other officers or directors. (Southeast Ex. 2, pp. 1-2; Tr. 1399, 1409, 1413-14)

168. Butler is Office and Business Manager, with administrative responsibilities for all three restaurants. Her duties include formulating policy, supervising local marketing, preparing budgets, hiring and firing personnel, and supervising accounting procedures. She is responsible for cash flow management and related matters and is also involved in local marketing for the restaurants. The Butlers, functioning as a husband-wife management team, have frequent "informal" stockholder and Board meetings to formulate overall policy. Butler presently devotes a minimum of 40 hours a week to these duties. (Southeast Ex. 2, p. 2; Tr. 1440-46) Butler does most of her work at home in what she regards as the corporate business office. (Tr. 1446-48) Her husband, on the other hand, splits his time between the restaurants and their home, devoting as many as 50 or more hours a week (sometimes seven days a week) to his duties as the operational head of the companies' restaurants. He has been trained by McDonald's to be the licensed operator of the restaurants. (Tr. 1413, 1446-48, 1450, 1452-53, 1458)

169. Should Southeast be granted the authorization for its proposed station, Butler proposes to relinquish all of her "day-to-day" activities for Cherikel and Wilenca. She represents that she "will no longer be involved on a day-to-day basis in the management of either company." (Southeast Ex. 2, p. 4) Butler told Messrs. Perry and Davidoff that she would transfer her day-to-day responsibilities to her husband. (Tr. 3165-66) However, she does not intend to sell the McDonald's restaurants or her interests in Wilenca or Cherikel. Nor will she resign her corporate offices. (Tr. 1437) She will continue to be involved in overall policy decisions such as pursuing financing. (Tr. 1443)

170. Butler and her husband did not inform McDonald's of her commitment to Southeast until three or four weeks before the hearings, after the question had been raised at her deposition. (Tr. 1437) She then suggested to her husband that he contact McDonald's officials about the matter. (Tr. 1437, 1451, 1818-19, 1838-39) She does not recall whether any corporate minutes memorialize her intent to stop working for Cherikel and Wilenca, because she does not know "if that's been a formal decision." (Tr. 1463-64)

171. No one person now employed by Cherikel or Wilenca is qualified to assume Butler's various day-to-day duties. (Tr. 1450) She expressed the view that store managers could be trained to perform certain of her husband's supervisory functions at the stores, which would free him to move more into office duties, should she relinquish her responsibilities. (Tr. 1447, 1450) However, she conceded, for example, that the monthly accounting reports, the preparation of which she supervises, require several days of her time. Such reports could not be entrusted to the restaurant managers. (Tr. 1461-62) Butler cannot say whether her husband would assume this task and the related task of working with their accountant, or whether they would hire someone else. (Tr. 1462) The Butlers' office assistant, hired in July 1987, is not even qualified to be an executive secretary, much less to assume Butler's responsibilities. (Tr. 1462-63) Similarly, while Butler testified that she will relinquish her duties supervising the company's local marketing efforts, she did not explain who will assume those duties in her stead. (Tr. 1444)

172. *Relationship of Limited Partners To Each Other and To Butler* - While none of the members of the Perry Group (Perry, Courtney, Davidoff, Levin, and the Baers) have ever met any of the Chicago Group (Katten, Holland, Grossman, and Gerald B. Cohen), Perry found the latter acceptable on Cohen's recommendation. (Tr. 2490, 2496)

173. The business and personal relationships of the Perry Group are detailed, *supra*, and will not be repeated. Baer initially assumed that Perry would be involved in managing the station "because we knew him as an operator of broadcast stations." (Tr. 2636, 2639) Baer had "gotten the impression" from Perry, because he was a broadcasting executive, that he would "play some kind of active role in the station." (Tr. 3323-24) Only later did Baer learn that Perry was not to be actively involved. (Tr. 2636, 2639, 3324-25) Nevertheless, Baer "was very much being guided in this investment" by Perry. It was Perry who told him about it and introduced him to the attorneys. It was Perry who investigated Butler. Baer related that it was Perry who "sort of structured the financial [sic] of the deal," and, as a result, he, Baer, listened to whatever he said. (Tr. 3368)

174. As noted, *supra*, Baer has never met Butler or spoken to her on the telephone. In placing his trust in Butler, as General Partner, Baer has relied on the judgment of Perry and Davidoff. It was up to them whether or not to pursue other candidates for General Partner. Baer had no idea how long Perry and Davidoff met with her in June 1986 or whether they asked for references. He never asked for any references or any evidence that the Butlers' businesses are successful. (Tr. 3328-29) Baer left up to Davidoff, whom he regards as a good negotiator, the

decision on what role Butler would play at the station. He did not discuss with Perry or Davidoff what managerial position would be offered. (Tr. 3331-33)

175. Davidoff explained that he is placing his reliance on the limited partners in the Perry Group, "people we've dealt with for a long time and we are not concerned about having problems with them." (Tr. 2898-99) He is reassured by his long-standing relationship with Perry and the fact that the Perry Group controls 72% of the limited partnership. Davidoff will look to Baer and Perry in the future with regard to the investment in the venture. Davidoff explained that he will look to the "large players" if "fresh money" is needed, if "experience" is needed, and if Southeast or CMNY "need[s] some input from the limited partners as to what we should [do] now." (Tr. 3192-93) Davidoff, who characterized the venture as "high-risk," explained that he listened to the proposition because is came from Perry, whom he regards as a "good businessman" who understands the broadcast industry. (Tr. 2885-87)

176. Courtney has never met Butler. (Tr. 4329-30) In deciding to invest he relied on Perry's "broadcast experience and judgment." (Tr. 4367- 69) Courtney explained that he will want Perry's opinion about how things are going at the station, based on reports from Butler. (Tr. 4329-30)

177. Katten has never met or spoken to Butler, but believes her to be a strong managerial candidate because of Cohen's judgment and because Cohen told him that the "other significant limited partners in the venture," namely, the Perry Group, were of that belief. Cohen had interviewed Butler "at length," before agreeing to her selection as General Partner. (Tr. 4276)

178. Grossman likewise has never met or spoken to Butler. He understood that she was "selected" after an interview by several limited partners. He did not attend the interview because he believed that his interests were represented by the Perry Group. (Metroplex Ex. 85, pp. 15-18)

179. Gerald B. Cohen has never met Butler and knows nothing about her. He was not aware as to who will manage the proposed station. He is relying totally on Grossman, who is an investment counselor for pension funds. (Tr. 3408, 3421, 3424, 3427, 3429-31) "Whatever he said to do, I did." (Tr. 3437)

180. Levin has never met or talked to Butler. He first learned her identity when he received a letter requesting a capital contribution and sent her a check. (Metroplex Ex. 84, pp. 21-23) Since investing, Levin has spoken with Baer "from time to time" about the investment. He also received copies of documents in the WHYI litigation from Cohen, whom he calls to inquire about the progress of the case. (*Id.*, pp. 25-27) At one point he asked Cohen who, if anyone, at the station would have broadcast experience, and Cohen told him that "there would be experienced broadcast people coming on board." (*Id.*, pp. 44-47)

181. Holland has never met Butler. He did not attend her interview in June 1966 because he relied on the judgment of the Perry Group. (Tr. 3594-95, 3628) Holland explained that he "had a good relationship" with Cohen, and since there were people whom counsel "had dealt with in the past . . . his judgment obviously led to my being more comfortable with the relationship." (Tr. 3627-28)

182. *Limited Partners' Understanding re Terms of Partnership Agreement* - Paragraph 22(c) of the partnership agreement provides that a majority of the limited partners may, by vote, remove the General Partner "only for good cause," defined, in part, as an adjudication of incompetence by a court of competent jurisdiction. (Southeast Ex. 12, p. 16) Perry, at his September 1987 deposition, construed the term "incompetent" in paragraph 22 to mean that the limited partners could remove Butler if her performance at the station constituted incompetency. (Tr. 2531-32) However, at the hearing he acknowledged that he had erred and that the only basis for Butler's removal would be an adjudication that she was mentally and physically incompetent. (Tr. 2532-33) He admitted that counsel had told him that his former understanding was correct. (Tr. 2533-34)[14]

183. Katten, who is an attorney, also understood at the time of his September 1987 deposition that Butler could be removed as a manager by the limited partners "upon any good reason for doing so." However, like Perry, he was furnished a "correct" understanding by counsel after his deposition. (Tr. 4295-97)

184. Katten testified at the time of his September 1987 deposition that he understood that, like other partnerships with which he had been involved, Southeast would form an "audit" committee of limited partners to approve Butler's salary. This "incorrect" understanding was corrected by counsel after the deposition. (Tr. 4284-90) Grossman, whose deposition was received in evidence in lieu of his testifying at the hearing, presumed that the limited partners would determine Butler's salary. (Metroplex Ex. 85, pp. 39, 41) Courtney understood at the time of his September 1987 deposition that the limited partners would be consulted about Butler's salary and benefits. However, he now feels differently, based on a call from Cohen and a "more thorough" reading of the partnership agreement. Courtney explained that his deposition response reflected his past experience in other limited partnerships, wherein the limited partners were often consulted on "anything important," *e.g.*, compensation of the General Partner. In September 1987, he felt that this was a procedure that would be followed in this case. (Tr. 4348-54) Perry, until corrected by counsel, likewise understood that Cohen & Berfield would make a recommendation to him concerning Butler's salary. Even after being corrected, he understood that he could retain Cohen & Berfield to investigate whether Butler's determination of her salary constituted "milking" the partnership. (Tr. 2498-99, 2582, 2599-2600)

185. Davidoff testified at his deposition that he and others had yet to make the decision whether to employ experienced management personnel at the station. He corrected this statement at the hearing to say that the General Partner will make this decision. (Tr. 2993-95)

(3) *Other Media Interests*

186. Neither Southeast nor Butler has an ownership interest in any medium of mass communications. (Southeast Ex. 2, p. 1)

187. Perry is President, a director, and 30% voting stockholder of the licensee of WADK(AM), Newport, Rhode Island. His wife, Jane N. Perry, holds an additional 30% and is also an officer and director. Courtney is an officer, director, and 40% voting stockholder. Perry is also President, a director, and 80% voting stockholder of the licensee of WOTB(FM), iddletown, Rhode Island. His wife is an officer. Courtney is an officer, director, and

20% voting stockholder. (Metroplex Ex. 33; Tr. 2412, 2416-17) Perry also owns a 5% limited partnership interest in a cable television system with approximately 2,700 subscribers on Martha's Vineyard, Massachusetts. (Tr. 2409-11)

188. As of February 20, 1987, CMNY Capital, L.P. directly held a 7% voting interest in the licensee of WIVI(FM), St. Croix, Virgin Islands. Baer was a director of that licensee and its parent company. (Metroplex Ex. 33; Tr. 2834-38) CMNY also has an 8% interest in Founders Communications, which owns 16 newspapers in the Houston, Texas, area, including three daily newspapers, nine newspapers published weekly, semi-weekly or bi-weekly, and four "shopper" papers. (Tr. 2842-48) In addition, CMNY holds a 20% interest in Techcom, Inc., and a 30% interest in Intercontinental Publications, Inc., publishers of five controlled-circulation magazines. (Tr. 2851-54) As of February 1987, CMNY also held a 6.1% indirect interest in cable television systems in Ohio and West Virginia. (Tr. 2849-51)

(4) *Auxiliary Power*

189. Southeast proposes to utilize an auxiliary power generator in the event of a power failure. (Southeast Ex. 2, p. 4)

II. THE SOUTHEAST FINANCIAL CERTIFICATION ISSUE

A. *Butler's Certification Re Southeast's Financial Qualifications - 9/3/86*

190. When Butler, Southeast's General Partner, signed Southeast's application on September 30, 1986, and filed it with the Commission on October 30, 1986, she answered "Yes" to Question 1 of Section III of the application form, thereby certifying that "sufficient net liquid assets are on hand or are available from committed sources to construct and operate the requested facilities for three months without revenue." (Metroplex Ex. 76; Tr. 2164, 2176) She also answered "Yes" to Question 2 of Section III, thereby certifying that she had "reasonable assurance" that Southeast's limited partners had "sufficient net liquid assets" to meet their commitments and that CMNY had "a present firm intention" of lending $600,000 to the partnership. (Metroplex Ex. 76)

191. When Butler certified that Southeast was financially qualified, she based this representation on the following documents: operating cost estimates prepared by Cohen, Southeast's counsel (Southeast Ex. 3, p. 1 and att. 1; Tr. 1500, 3652); a letter dated July 23, 1986, from Southeast's engineer, Dr. Robert L. Hoover (Hoover), concerning equipment and installation costs (Southeast Ex. 3, att. 2); and a loan commitment letter in the amount of $600,000, dated July 28, 1986, from CMNY Capital Corp. (CMNY), a small business investment company. (Southeast Ex. 3, p. 1, att. 3)

192. According to Butler, at the time she signed Southeast's application, the $600,000 loan commitment letter gave Southeast almost $135,000 more than its estimated costs of $465,709, which appeared to be ample to cover any costs that may have been overlooked or underestimated. (Southeast Ex. 3, p. 2)

B. *Estimated Cost of Construction and Operation as of 9/30/86*

(1) *Estimated Operating Costs*

193. The budget prepared by Cohen estimated that operating costs for the first three months would be $240,709. The budget was broken down into five principal categories, and these in turn contained more than 40 subcategories. (Southeast Ex. 3, att. 1) The first category was "General and Administrative" at $71,114, with 19 subcategories, including general manager's salary ($18,750). The second category in the operating budget was "Program, Advertising and Promotion Departments" at $70,600. The third and fourth categories were, respectively, "News, Public Affairs and Sports Departments" at $30,450 and the "Sales Department" at $48,545. Lastly, the "Engineering Department" was estimated at $20,000. (*Id.*)

194. Butler accepted these estimates as "[c]ost estimates [that] had been prepared by individuals I believed to be experienced in such matters." (Southeast Ex. 3, p. 2) She identified those individuals as Cohen and Hoover, an engineering consultant retained by Cohen. (*Id.*, p. 1; Tr. 1503) She knew, however, that Hoover's only contribution was, as discussed, *infra*, to estimate equipment costs. She was aware that he had no input into the cost estimates in the three-months' operating budget. (Southeast Ex. 3, p. 1; Tr. 1500, 3652) Butler placed "total reliance" on Cohen with respect to operating costs. (Tr. 2167)

195. The record is silent as to where or how Cohen obtained his figures. Butler acknowledged that she did not know how Cohen obtained his figures or what basis, if any, he had for them. (Tr. 1500)

196. Butler recalled two meetings with Cohen prior to the time she met with him to review the budget on July 30, 1986. (Tr. 1500-01) She believed Cohen to be experienced in the preparation of cost estimates. (Southeast Ex. 3, p. 2; Tr. 1503) However, she did not know if Cohen had made any investigation to determine whether the figures in his cost estimates were accurate. Nor did she know if Cohen contacted any Miami-Ft. Lauderdale radio stations concerning his cost estimates. (Tr. 1501-02) She knew that he did not contact the site owners of Southeast's proposed sites. (Tr. 1502) She did not know whether Cohen had station clients in the Miami-Ft. Lauderdale area and as far as she knew Cohen had never owned a radio station. Moreover, she did not know if he had ever worked at a radio station. (Tr. 1501-02)

197. At the July 30, 1986, meeting, Cohen had a preliminary draft of Southeast's proposed cost estimates, which included cost of construction and three months of operating costs. (Tr. 1862) The only document he had that supported his cost estimate figures was a letter from Hoover concerning the cost of construction; namely, equipment and installment costs. Butler saw no documents. (Tr. 2166-67) She had no documents. (Tr. 1506) They reviewed and discussed the estimates in the draft. (Southeast Ex. 3, p. 1; Tr. 1513) She did not ask to see additional documentation. She simply asked him about the numbers. She did not remember asking specific questions on the items. She might have asked how he arrived at the figures and what the dollar amounts represented. (Tr. 2167) She did not recall giving him specific figures or information in any category. (Tr. 1506)

198. The record does not disclose anything in Butler's background or experience that could have given her reasonable assurance as to the reliability of Cohen's operating cost figures. She explained that she reviewed the draft budget in light of her "general experience in business in the Miami area." (Southeast Ex. 3, p. 2) However, she admitted that her general business background did not include knowledge about such things as the amount a station with Southeast's proposed format would have to pay in salaries;[15] the price of records and tapes for a FM radio station; music license fees; the salary of a sales manager; or the cost of a wire or news service. (Tr. 1507-11, 1514-15, 2238) She recalled that Cohen made notes as they talked and that he took the draft document and notes back to his office for retyping. (Tr. 1862)

199. It is noted that estimated salaries accounted for 15 of the approximately 40 items in the budget, and those 15 items accounted for approximately 46% of the total budget.[16] As noted earlier, the record is silent as to the basis for those salary figures. It shows only that Butler accepted the figures that Cohen gave her without knowing what basis, if any, he had for them.

200. Butler conceded that her "general experience" gave her no basis for evaluating other items in the budget, including the figures for records and tapes ($1,550), music license fees ($4,440), wire service ($3,000), news service ($1,500), and antenna and transmitter site rental ($12,500). (Southeast Ex. 3, att. 1, pp. 3-4; Tr. 1510-11, 1955-61, 2169-71, 3652) She also had no specific information to support the budget figures of $5,000 for advertising and promotion, $2,250 for business machine rental, or $4,500 for medical insurance. (Tr. 1516, 1550-54, 1564) These eight items total $31,850 and comprise an additional 13% of the budget on which she based her certification.

201. When Butler left the July 30, 1986, meeting with Cohen, she retained a copy of the draft budget. (Tr. 1514) She and Cohen discussed the budget during telephone conversations during the period July 30, 1986, and their meeting on September 30, 1986. However, she did not recall making any revisions. (Tr. 1515) Cohen brought a copy of Southeast's budget to the September 30, 1986, meeting at which Butler certified that Southeast was financially qualified. They made no changes in the budget at that meeting. (Southeast Ex. 3, p. 1; Metroplex Ex. 76; Tr. 1515) She believed the estimates reasonably reflected the cost of constructing the station and funding its operation for a three month start-up period. (Southeast Ex. 2, 2)

202. Butler did no research to prepare for her budget meetings with Cohen. (Tr. 1504) She did not visit a radio station and, in fact, has been in a station only once, when she went to a Ft. Lauderdale station for production of a commercial in 1983. (Tr. 1505)

203. Butler did not discuss with Cohen prior to the time she certified as to Southeast's financial qualifications what impact the proposed format of the station would have on the budget. (Tr. 1531) Although Southeast proposes to broadcast public affairs and news programming, she could not say how much public affairs programming would be presented, what form it would take, how many hours of news would be broadcast, how much of it would be local, why she had separate estimates for "Wire Service" and "News Service," or which services would be used at the station. (Tr. 1520-22, 1546-48) Although Southeast proposes to broadcast various kinds of informational programming, including programs in Patois (the Haitian dialect), programs on the needs of neglected and battered women and children, and "survival" programming for the poor, Butler did not know the amount or length of such programming or the cost of acquiring or producing it when she certified that Southeast was financially qualified. (Tr. 1523-26)

(2) ***Estimated Cost of Construction - Equipment Costs and Installation***

204. The other category of costs considered by Butler when she certified that Southeast was financially qualified was the $225,000 estimate for "Cost of Acquiring Equipment including Auxiliary Generator." That figure was based upon a letter of July 23, 1986, from Hoover to Cohen, attached to which was a page headed "Cost Estimates for WHYI-FM." (Southeast Ex. 3, att. 2)

205. Hoover, who was hired by Cohen, was the sole source for the $225,000 figure. Butler, who relied on Cohen to hire a qualified person, never met or spoke to Hoover and knew nothing about his qualifications. (Tr. 1511-12) She did not know how he obtained his estimates or whether he had ever provided such estimates to other clients. (Tr. 1512) Hoover, for his part, did not learn for whom his services were provided until the day before his deposition in August 1987. Hoover's bill was paid by Cohen & Berfield, and he reported exclusively to Cohen and Roy Boyce (Boyce) of that firm. (Tr. 3642-49; Metroplex Ex. 86)

206. On July 8, 1986, Cohen asked Hoover to develop a cost analysis to duplicate the WHYI facilities. Cohen, by letter dated July 8, 1986, confirmed this fact, enclosing a copy of the license authorization for WHYI. (Metroplex Ex. 86; Tr. 3643-44) The license specified a transmitter site at Pembroke Park, which will be referred to as the "old" site or the "candelabra" site. (Tr. 3649) Hoover understood that he was not required to replicate the exact equipment on the WHYI license, but rather to achieve the operational capability of the instrument of Southeast's authorization. (Tr. 3649) Shortly after receiving the letter from Cohen, he learned from his data file and his research, using *Data World*, that WHYI also had a construction permit that authorized it to operate from a different site. (Tr. 3651, 3684-85) This second site will be referred to as the new site or the "Gannett" site. (Tr. 3681) Hoover understood that he was to replicate the facilities utilized by WHYI at both sites. (Tr. 3649-50) Hoover made no effort to determine from which site WHYI was then operating. (Tr. 3685) He did not visit either site. (Tr. 3680) Hoover was aware that the Gannett tower was a new design with many problems. (Tr. 3698) He understood that Gannett's master antenna had burned three or four times and he did not know if the problems had been resolved. (Tr. 3717)

207. It is appropriate to set forth a brief history as to Metroplex's use of the old and new antenna sites. Prior to March 1985, WHYI's antenna was located on a candelabra tower at Pembroke Park in Broward County. In early 1985, pursuant to a construction permit (BPH-840711AW) granted by the Commission in September 1984, the station relocated to a master antenna shared by eight other FM stations on the Guy Gannett tower in Dade County. The station's operation from the Gannett site has been pursuant to program test authority; its license application has remained pending from 1986 to the present. Because of ongoing technical difficulties with the

Gannett master antenna, WHYI has, from time to time, operated from the candelabra tower with Commission consent. (Southeast Ex. 3, att. 5; Tr. 1969-71, 1994-98) It is Metroplex's intention that the candelabra installation would eventually serve as an auxiliary site. (Southeast Ex. 3, att. 5) Hoover acknowledged that it was "common knowledge" in the broadcast engineering community for many years prior to 1986 that there were problems with the Gannett master antenna. (Tr. 3717-18, 3720)

208. Hoover, prior to July 23, 1986, contacted a number of vendors to obtain cost estimates for the equipment. (Tr. 3662-63) He did not contact the site owners or site representatives to determine the cost of locating on or the availability of slots on the towers at the old or new sites because he was not asked to do so and he did not want to get into anything that was not his business. (Tr. 3665, 3702-03) Hoover did not consider whether WHYI had incurred expenses getting on the Gannett master antenna. (Tr. 3694-95) He made no effort to speak to any representative of any of the stations located on the Gannett master antenna regarding costs and made no effort to ascertain the cost to a newcomer to replace WHYI on the Gannett master antenna. (Southeast Ex. 1, att. 2, p. 1; Tr. 3681, 3686, 3761)

209. Additionally, Hoover never made an effort to determine at which site WHYI was operating in July 1986, or what type of transmitter or related equipment it was using at either site. (Tr. 3685, 3708-11, 3720-21, 3728-29) Hoover, in his July 23, 1986, letter to Cohen, stated that the cost to duplicate the Gannett tower would be prohibitive,[17] but that "a newcomer could be accommodated where WHYI-FM was vacated." He recommended that "No new antenna should be considered for the 'Gannett' site, . . . " and suggested that the $200,000 package would cover it. (Southeast Ex. 3, atts. 2 and 4) Hoover explained that he gave his client cost estimates for equipment for both the candelabra and Gannett sites in an effort to provide as much information as he could to let them make a decision. (Tr. 3716) Hoover further explained that it was the function of the cost table he provided to set out the costs to buy equipment for one site or the other. (Southeast Ex. 3, atts. 2 and 4; Tr. 3716) According to Hoover, using the existing antenna at the candelabra site Southeast could acquire the remaining equipment for that site for $200,000. Similarly the cost of equipment to the Gannett site would be around $200,000. (Southeast Ex. 1, att. 2, p. 2; Tr. 3762-63) Based on the Hoover letter and his cost estimates and her discussion with Cohen, Butler estimated the cost of acquiring equipment and installation to be $225,000. (Southeast Ex. 3, p. 1; Tr. 1975)

210. The $225,000 figure did not include the cost of acquiring or leasing a place on the Gannett master antenna (new site) or the candelabra tower (old site). It was solely for the cost of equipment and installation. (Tr. 1977) It was Butler's understanding that Hoover's equipment cost estimates included equipment costs operating from either site and she explained that she and counsel took a larger estimate and that this figure would cover the cost of equipment operating from either site, but not both. (Tr. 1991-92, 2210, 2213, 3692)

211. It appeared from Butler's testimony that at the time she certified as to Southeast's financial qualifications that she was confused as to whether Southeast proposed to operate from the candelabra tower (old site) or the Gannett master antenna (new site). However, one thing is clear, and that is that the $225,000 estimated equipment cost figure involved the equipment cost for operating from one, not two sites. (Tr. 1991-93, 2005-08, 2168, 2170-71, 2204-07) When Butler signed Southeast's permit application representing that Southeast "proposes to utilize the antenna now employed by FM Station WHYI . . . " it was her understanding that the site Southeast was referring to was "the site in use" and that there was a question as to "which of the two sites would end up being in use." (Tr. 2168, 2204-06, 2207, 2211) It should be noted that Southeast's Notice of Publication published in the daily Ft. Lauderdale paper on November 12, 13, 19 and 20, 1986, informed the public that Southeast's antenna site would be located either at WHYI's licensed or authorized site. (Southeast Ex. 13)

212. Included in the estimated $240,709 operating costs was $12,500 for cost for antenna and transmitter site rental. (Southeast Ex. 3, att. 1, p. 4) The record is silent as to the basis of this cost estimate. Butler, at the time she certified, did not know if there were any discussions between a representative of Southeast and the licensee for station WHYI as to the cost of acquiring its sites. (Tr. 2168) She did not know if there were conversations between a representative of Southeast and the owner of either of the sites which were utilized by station WHYI. (Tr. 2168-69) She had "assumed" that this had been done. (Tr. 1961) In fact, no one on behalf of Southeast contacted the owners of the sites or their representatives. (Tr. 3767)

213. Butler did not know where either site was or how much land was in use at either site. (Tr. 2012-13, 2169-71, 2205) She had never checked with either site owner herself, she had never been told by Cohen or Hoover that either of them had done so, and she did not think that any of the limited partners had done so. (Tr. 1961-62) In fact, no one had done so. (Tr. 3766-67, 3675, 3681, 3688) No effort was ever made to determine what it would cost for "a newcomer [to] be accommodated where WHYI-FM was vacated" on the Gannett tower. (Southeast Ex. 3, att. 2, p. 1; Tr. 1991)

214. Butler relied on Cohen for the figure of $12,500 set aside for antenna and transmitter site rental in the Southeast budget. (Southeast Ex. 1, p. 3; Southeast Ex. 3, att. 1, p. 4; Tr. 1510-11) It was her understanding that the figure of $12,500 was to cover the cost of rental of either one of the sites used by station WHYI, but not both. (Tr. 1958, 2169, 2171)

215. Hoover never contacted the owner of either the old site or the new site, and his letter of July 23, 1986, did not say that he had done so. (Southeast Ex. 3, att. 2; Tr. 1955-60, 1977, 3767) He had no input into the $12,500 figure for "Antenna and Transmitter Site Rental" in the budget that Cohen prepared for Butler. (Tr. 3652; Southeast Ex. 3, att. 1, 4) Butler was unaware where the $12,500 figure came from, and the record is silent as to its source.

(3) The $500,000 Bonus To Counsel

216. Paragraph 2 of page 2 of the retainer agreement between the law firm of Cohen & Berfield and the principals of Southeast provides (Metroplex Ex. 19, pp. 2, 3-11):

> In the event the Limited Partnership is awarded the authorization to construct and operate the Fort Lauderdale FM station, at the time such grant be-

comes a final Order, Cohen & Berfield will receive Five Hundred Thousand ($500,000) Dollars as a bonus.

217. Butler was familiar with the terms of the retainer agreement on September 30, 1986, when she certified that Southeast was financially qualified. She had been given a copy of the agreement when she met with Cohen, Perry, and Davidoff in New York on June 13, 1986. She took it back to Florida with her, and at some point during the next two weeks she signed it and returned it to Cohen. (Tr. 2136-37, 2153-54; Metroplex Ex. 19, p. 3) As noted, *supra*, a month later, on July 30, 1986, she met with Cohen to discuss Southeast's financial obligations and how it would meet them.

218. Butler explained that she had not included the $500,000 obligation in estimating the total expenses that Southeast would incur during the first three months of operation because the Commission's grant would not become a "final order" until three months after the station commenced operating. (Tr. 2132-33) She further explained that she learned from Cohen that the $500,000 would not be due until "after this was in [sic] final order and that would not be the case until . . . sometime after the three month period." (Tr. 2132-36, 2173) This understanding with Cohen was never reduced to writing. (Tr. 2133) Butler never asked Cohen why the retainer agreement did not specifically set forth that understanding. (Tr. 2134) In September 1986, when Butler certified that Southeast was financially qualified, she had no document of any kind that amended the express terms of the retainer agreement and no such document exists today. (Tr. 2133)

219. When questioned as to when Cohen told her about the three-months' deferral of the $500,000 bonus, Butler did not remember exactly when it was but believed that it was before she returned the retainer agreement to Cohen and "I think it must have been" before she signed the partnership agreement. (Tr. 2133)

220. Butler also explained that it was her understanding that if Southeast received the grant the facility would be of such value that Southeast would be able to raise the money. (Tr. 2130) She felt it would not be difficult to get financing for a radio station. (Tr. 2131) However, she admitted that she has never made any arrangements to obtain financing for the $500,000. (Tr. 2131)

C. *Funds Available As Of 9/30/86*

(1) *Capital Contributions of Southeast's Limited Partners as of 9/30/86*

221. As detailed, *supra*, the retainer agreement with Cohen & Berfield provided that $200,000 would be charged by the firm for legal fees and out-of-pocket expenses "through an absolutely final decision in court." (Metroplex Ex. 19, p. 1) That amount was not included in the budget that Butler had before her when she certified that Southeast was financially qualified. However, this amount constituted prosecution costs and, when the $200,000 is added to the $225,000 in equipment costs and the $240,709 in operating costs, the total costs exceeded the $600,000 specified in the CMNY loan letter. (Southeast Ex. 3, att. 1, p. 1) Butler explained that the reason that the $200,000 in legal fees was excluded from the budget was the expectation that the limited partners would make the $200,000 in capital contributions, as required by the partnership agreement. (Tr. 2174, 2552-54; Southeast Ex. 3, p. 2 and att. 1)

222. According to the capital contribution schedule set forth in the retainer agreement, each limited partner was required to pay 12.5 percent upon signing the agreement, 12.5 percent 30 days after the limited partnership agreement was filed, 25 percent due 15 days after designation, and the remainder was to be paid throughout the hearing process. (Metroplex Ex. 19, pp. 1-2) The provisions governing capital contributions and setting forth the ownership interests of each partner, including the general partner, were also incorporated in the certificate and limited partnership agreement of Southeast which was signed by all of the principals of Southeast and filed with the Florida Secretary of State on July 22, 1986. (Southeast Ex. 12) As of September 30, 1986, the date Butler certified to Southeast's financial qualifications, only $50,000 of the $200,000 had been paid. (Tr. 2151; Metroplex Ex. 75)

223. Although Butler had met some of the limited partners and had seen the signatures on the partnership agreement, she had not seen a balance sheet or financial statement for any of them, and had no personal knowledge of their financial resources. She explained that she "relied on Mr. Cohen that he had that information." (Tr. 2177) In fact, Cohen had not obtained that information from the limited partners. (Tr. 2227, 2901-02, 3012-17, 3364-65, 4305-06, 4355, 4367; Metroplex Ex. 84, pp. 33-34)

(2) *The 1986 CMNY Loan Letter*

224. At the time Butler certified as to Southeast's financial qualifications she had on hand a loan commitment letter dated July 28, 1986, in the amount of $600,000 from CMNY Capital Company, Inc. (CMNY), signed by Davidoff as the President. After stating his awareness of Southeast's application, Davidoff's letter stated that CMNY proposed to loan Southeast up to $600,000 for the purposes of constructing and operating the proposed station. The letter continued (Southeast Ex. 3, att. 3):

> The loan will be for a period of five (5) years with interest payments calculated at a rate not in excess of two percent (2%) over the prime rate of Chase Manhattan Bank. No principal or interest payments will be required for the first three (3) months of the loan period with equal quarterly payments thereafter. The collateral for the loan will be all the tangible assets of the partnership and personal guarantee and pledge of assets of each of the principals as deemed necessary by CMNY.
>
> We understand that the FCC does not require a contractually binding commitment from us at this time, and this letter is not such a commitment. We do intend by this letter to assure you and the FCC of our desire and intention to make the loan available on the terms and conditions indicated. Funding of the amount indicated, or any part thereof, will be subject to formal approval by CMNY after its review of Southeast Florida's financial condition and each of its partner's financial condition and repayment ability, and the execution of a loan agreement incor-

porating those terms and conditions that we may deem appropriate, as well as the availability of funds at the time the loan agreement is executed.

225. Butler played no role in the decision to have CMNY provide a loan letter to the applicant. As noted, *supra*, this commitment was made by Davidoff, a limited partner in Southeast, at the May 16, 1986, meeting. In response to a question by Perry at that meeting, Cohen proposed that the letter be in the amount of $600,000, and that was accepted in reliance on counsel's judgment. Details as to the interest to be charged or repayment were not discussed, and nothing was committed to writing at that time. It was understood, at that time, that Cohen & Berfield would draft a letter "suitable for FCC purposes."

226. Butler first became aware of the possibility that CMNY would provide financing at her June 13, 1986, interview. Davidoff told her then that CMNY was prepared to provide financing. He did not specify an amount. He noted that "he would reserve the right to ask for certain liability on the part of the limited partners." (Tr. 2118-24) Butler was told that CMNY was a small business investment company. There was no discussion of whether CMNY had ever invested in a broadcast enterprise before. Davidoff did not, at this meeting, ask Butler what her net worth or income was. Nor did he ask whether she was financially able to guarantee the loan or to sustain a general partner's liability for partnership obligations. (Tr. 2125-26)

227. Based upon her review with Cohen of various financial information about CMNY, Butler felt confident that CMNY was capable of providing the $600,000 funding as provided in the July 28, 1986, CMNY loan letter. (Tr. 2179-80) At the time Butler certified as to Southeast's financial qualifications, she had no assurances that the principals of Southeast would be willing to meet the contingent collateral requirements of making personal guarantees and pledges of assets to CMNY. (Tr. 2160-62, 2183, 2522-23, 3017-20) Butler explained that, based on her discussions with Cohen, she did not think it necessary to obtain indications in writing that the limited partners would be willing to meet the contingent collateral requirements. In her view, it was something that the lending institution could request if it deemed it necessary. (Tr. 2160, 2183)

III. SOUTHEAST'S FINANCIAL QUALIFICATIONS ISSUE

A. *Increase in Total Cost of Construction and Operation and in Funds Available*

228. In a petition to enlarge issues filed by Metroplex on April 20, 1987, Ross, WHYI's General Manager averred that at the very least the new licensee would be required to reimburse Metroplex for its share of the capital costs relating to the Gannett master antenna. Ross represented that this amounted to a sum in excess of $166,000. Ross also stated that monthly rental for the Gannett tower was $5,000, and that monthly rental payments on the separate leases for the candelabra tower were $3,058. (Southeast Ex. 3, p. 3, att. 5, p. 2) No provision had been made in the Southeast budget for capital costs for the Gannett site. (Southeast Ex. 3, 3, att. 1, att. 5)

229. As noted in paragraph 4., *supra*, the Presiding Judge, by *Memorandum Opinion and Order* (FCC 87M-1287), released June 4, 1987, enlarged the issues to determine whether Southeast's financial certification was false and to determine whether Southeast is financially qualified to construct and operate the proposed station. As detailed in paragraphs 192., 193. and 204., *supra*, Southeast had originally estimated its operating and construction costs as $240,709 and $225,000, respectively, for a total cost of $465,709. Subsequent to the specification of a financial issue, Southeast increased its operating costs by $162,341, to $403,050 and increased its construction costs by $200,000, to $425,000. As a result, its total estimated cost to construct and operate the proposed facility now totals $828,050. In order to meet these increased costs, Southeast obtained a new loan letter from CMNY for $900,000. (Southeast Ex. 3, pp. 2-4)

B. *Revised Estimated Cost of Construction and Operation*

(1) *Retention of Diaz as Consultant re Operating Expenses*

230. Before her August 1987 deposition, Butler and counsel were aware that they might have had "inadequate information" on other cost items. They recognized that they needed to review the entire 1986 budget to "make adjustments" and to address "possible weaknesses or areas that needed to be fortified." During her deposition, Butler's concerns about these matters increased because "[t]here were questions about the budget that I had doubts about." It became apparent to Butler "that our estimates on equipment were way off" and that "there were obviously items that we had not included in the budget that needed to be included." (Tr. 1869-74, 1897, 1916-21, 1931, 1935, 2214-16) These concerns led Butler to conclude that she and Cohen needed "additional expertise." She suggested to Cohen that an experienced broadcaster be retained to study Southeast's budget projections. It was decided that Cohen would locate such a person, since she did not know any experienced broadcasters. (Tr. 1554, 1874-76; 1905; Southeast Ex. 3, p. 3)

231. Subsequently, Cohen notified Butler that he had retained Rafael Diaz Gutierrez (Diaz) on Southeast's behalf. He described Diaz's qualifications to her during a telephone conversation. She understood that Diaz had previous broadcast experience, and that he was to review the estimated operating costs and make adjustments where he thought it was appropriate. (Tr. 1876, 1894-97, 1905) Butler acknowledged that she did not know what materials Diaz was shown, that she had no discussions with Diaz and never met him, and that she made no personal investigation or inquiry to confirm or corroborate any of Diaz's estimates. (Tr. 1530, 1554-55, 1866, 1913, 1922)

232. Diaz was contacted by Cohen on behalf of Southeast on September 21, 1987. (Metroplex Ex. 77; Tr. 2648) Diaz knew Cohen because he was a client of Cohen's for about six months beginning in February or March 1987. (Tr. 2695) Cohen told Diaz that, based on Diaz's experience as general manager of a radio station in New York City, and as a vice-president of a station in Los Angeles, he needed Diaz's services to prepare a budget for 90 days for a Class C, 100,000 watt station operating 24 hours. (Tr. 2651, 2716, 2775) Diaz had been the General Manager of WSKQ-AM, a 24-hour 5,000 watt station in New York City from October 1, 1983, to October 28, 1985. He also helped supervise KSQW in Los Angeles, although he did not serve there as General Manager. Neither station

was a new facility when acquired in 1983, and changed to Spanish-language operations. (Tr. 2661-65, 2692-93; Southeast Ex. 4, p. 41; Metroplex Ex. 80) Diaz never owned, operated, or worked at a station in the Miami-Ft. Lauderdale market. (Tr. 2665)

233. Diaz also worked as an announcer at Cuban and American stations from 1944 through 1957. From 1958 to 1972, he was employed as an Assistant Director at WHOM-AM-FM in New York, where his duties involved programming strategy and management of the radio announcer and marketing staff. (Southeast Ex. 4, p. 3; Tr. 2700-02) Each of the radio stations at which Diaz has worked was Spanish-language. (Tr. 2667-68, 2813) Diaz never prepared a budget for a Class C station. (Tr. 2784) Diaz had never taken on a similar assignment, never testified as an expert in FCC proceedings, and had never been qualified anywhere as an expert regarding the budget of a radio station. (Tr. 2653) He had not been asked by Cohen if he had any experience in an English language market. (Tr. 2815) Diaz assumed Cohen knew his familiarity was limited to the Spanish language market. (Tr. 2814) Diaz acknowledged that his budget experience was limited to Spanish language format stations and that he based his estimates on his experience with the Spanish market. (Tr. 2670-71, 2813)

234. Diaz has never owned, operated, or been employed at a contemporary hit radio (CHR) station. He has never visited WHYI. (Tr. 2665-67) While he was of the view that there is not much difference between the budgets of CHR and Spanish-language stations, he admitted that he has no experience with or knowledge of the operating budget of a broadcast facility other than a Spanish-language station. (Tr. 2668-71)

235. On September 21, 1987, counsel Boyce sent Diaz copies of Southeast's 1986 budget, Hoover's July 23, 1986, letter, and Hoover's amended cost estimates. Boyce's letter instructed Diaz that Southeast had to allow $225,000 for equipment and $225,000 for site acquisition costs, leaving $450,000 to work with in terms of the cost of operation up through the first three months. The letter added that Southeast had a $900,000 loan commitment, but might need to "leave a cushion for payments that might come due if the loan is taken down prior to the beginning of operation." Boyce's letter indicated a carbon copy to Butler. (Metroplex Ex. 77)[18]

236. Diaz acknowledged that he was told by Cohen during a September 1987 telephone conversation, and again in Boyce's letter, that Southeast had to allow $225,000 for equipment and $225,000 for site acquisition costs. However, he insisted that he ignored these guidelines and that his budget of $403,050 does not reflect in any way a mandate to keep his estimates below $450,000. According to Diaz, he told Cohen that he would not take these guidelines into consideration and that his budget had no "cap" or ceiling on it, to which Cohen made no response. (Tr. 2654-59, 2697-98)

237. Cohen instructed Diaz to base his budgetary projections on a hypothetical "start-up" or new station, but one with its antenna, tower, transmitter, and studio facilities in place. Had Diaz been told that studio acquisition or renovation costs were necessary or that technical facilities had to be acquired and/or constructed, his cost estimates would have been increased by an undetermined amount. (Tr. 2801-05)

238. Cohen and Diaz met on October 23, 1987, at the latter's New York office, to review Southeast's 1986 budget. Diaz "started criticizing" the budget based on his experience in New York and Los Angeles. They reviewed the old budget and where Diaz agreed with it they left it alone; if he disagreed they changed it. The meeting took an hour to an hour and a half. Cohen took notes to reflect the proposed changes in the old budget. When they were finished, Cohen took the notes back to Washington and prepared a revised operating cost budget and a declaration, which he transmitted to Diaz for his approval. Diaz reviewed the material sent by Cohen and made no changes in the revised operating cost budget before executing the declaration. (Tr. 2660-61, 2674-75, 2681-84, 2697-98, 2718-20, 2729-31, 2733, 2787; Southeast Ex. 4)

(2) *Revised Estimated Operating Costs*

239. The revised operating cost budget is set forth, *infra*, detailing the increases from Southeast's 1986 budget both in dollars and percentages (Southeast Ex. 4, pp. 2, 5-7):

Summary of Cost of Operation for Three Months*

Category	Total	Vs. 1986 Budget
General and Administrative	$84,300	M(+$ 13,186) (18.5%)
Program, Advertising and Promotion Department	112,050	(+ 41,450) (58.7%)
News, Public Affairs and Sports Department	35,350	(+ 4,900) (16.1%)
Sales Department	118,100	M (+69,555) (143.0%)
Engineering Department	23,250	M (+3,250) (16.3%)
Post Grant Expenses	30,000 NEW	M(+ 30,000) (100.0%)
TOTAL	$403,050	M(+$162,341) (67.4%)

* A plus sign (+) indicates an increase from the 1986 budget, and a minus sign (-) indicates a decrease. New line items are designated "NEW."

General and Administrative	Quarterly
1 - General Manager	$18,750
1 - Executive Secretary	4,000
1 - Sec'y/Recept.	3,500 NEW
1 - Bookkeeper	7,500 NEW
Accounting Services	5,500 +
Rental -studio and office (including utilities)	7,000 +
Office Furniture Lease	3,000
Business Machine Rental	4,000 +
Insurance (fire and liability)	4,000 +
Insurance (medical)	4,500
Legal - Corporate	900
Legal - F.C.C.	900
Membership Dues	750
Subscriptions	750
Telephone	5,000 -
Postage	750 -
Printing and Supplies	2,500 +
Initial Supplies (stationery, etc.)	3,000
Payroll Taxes	8,000 +
TOTAL	$84,300 +

Program, Advertising and Promotion Departments	**Quarterly**
1 - Program Director	$ 12,500
1 - Music Director	10,000
4 - Announcers (full-time)	25,000
4 - Announcers (part-time)	12,000
1 - Promotion Director	10,000 NEW
Records and Tapes	1,550
Music License Fees	10,000 +
Advertising and Promotion	26,000 +
Librarian	5,000 NEW
TOTAL	$112,050 +

News, Public Affairs and Sports Departments	**Quarterly**
News Director	$ 6,250
Public Affairs Director	6,000
2 - News Announcers	8,600 -
Wire Service	4,000 +
News Service	5,500 +
Expenses - Miscellaneous	5,000 +
TOTAL	$35,350 +

Sales Department	**Quarterly**
General Sales Manager - Salary	$ 15,000 plus incentives +
Auto	600
Expenses	2,000 +
Secretary	8,500 NEW
Traffic Manager	7,500 +
Assistant Traffic Manager	7,000 +
5 - Account Executives - Salary	50,000 plus incentives +
Auto	3,000
Expenses	10,000 +
Secretary	7,500 NEW
Gopher	7,000 NEW
TOTAL	$118,100 plus incentives +

Engineering Department	**Quarterly**
1 - Contract Engineer	$ 6,000 +
1 - Production Engineer	7,000 NEW
Telephone Transmission Lines	2,000 NEW
Light and Power	4,500 +
Maintenance and Repairs	2,250
Antenna and Transmitter Site Rental	(Not Considered)
Broadcast Line	1,500 +
TOTAL	$23,250

240. Butler reviewed the Diaz "recommendations" and determined to accept them. Although the new operating budget was 67% higher than the budget she had previously accepted, she made no personal inquiry to corroborate the estimates and made no suggestions for changes. She accepted Diaz's figures because she was satisfied that she now had "the recommendations of a person experienced in broadcasting," who she was satisfied "did have knowledge of the Florida market." (Southeast Ex. 3, p. 3; Tr. 1912-13)

241. Diaz undertook no research of any kind before he met with counsel to review Southeast's budget. Nor did he make any inquiries of Miami-Ft. Lauderdale broadcasters. (Tr. 2698-99) He was unaware of the circumstances surrounding WHYI's transmitter sites and the fact that Southeast proposed operation from a master antenna. When he estimated the costs for light and power, he relied solely on his experience in New York and Los Angeles. He was not familiar with the power requirements of a station operating from a master antenna. (Tr. 2705-0; Southeast Ex. 4, p. 7)

242. Diaz had no idea where Southeast's studio will be located. He conceded that the cost of telephone transmission lines between a studio and transmitter depends on the distance involved; nevertheless, he made no assumption as to the distance when estimating the cost of such lines for Southeast. Nor did he price the cost of transmission lines in Miami-Ft. Lauderdale. (Tr. 2705-09, 2745-47; Southeast Ex. 4, p. 7)[1]

243. Diaz did not have a copy of the programming statement in Southeast's application when he and Cohen met to review the 1986 budget. Although he was later provided a copy, he did not revise his budget figures for programming costs. The budget figures reflected Diaz's experience in New York and Los Angeles; they did not reflect what the cost of informational programming would be for Southeast's station specifically, or for Miami-Ft. Lauderdale stations generally. (Tr. 2709-15; Metroplex Ex. 68)

244. Diaz was told by Cohen that the $18,750 salary for General Manager in Southeast's 1986 budget was "fixed" and could not be adjusted. Diaz did not ask counsel why this was so, and he was not told that a Southeast principal would be the General Manager. Diaz did not know whether General Managers of English language stations make $18,750. (Tr. 2716-23, 2805-06; Southeast Ex. 4, p. 5)

245. Diaz did not know how many commercials or PSAs, or how much public affairs programming Southeast's station would carry. Although he doubled the 1986 estimated cost for studio and office space, from $3,300 to $7,000, he acknowledged that he was unaware of the cost of office space in Miami-Ft. Lauderdale, how much space Southeast will require, or whether Southeast proposes to consolidate its studio and offices. He likewise was unaware how many employees WHYI or any other Miami-Ft. Lauderdale CHR station employs. His estimates reflect only the experience of his stations in New York and Los Angeles. (Tr. 2724-27, 2775, 2788-89, 2797; Southeast Ex. 4, p. 5; Metroplex Ex. 81)

246. While Diaz more than doubled the 1986 budget figure for studio and office space due to what he viewed as a much greater need for production and related facilities, he did not increase the 1986 budget allocation for office furniture. This was in error, and Diaz now would increase his estimate for furniture by an undetermined amount. (Tr. 2788-93; Southeast Ex. 4, p. 5) He made a similar error with respect to medical insurance costs, which should have been doubled in view of his expanded number of estimated employees. (Tr. 2794) Diaz conceded that his small increase over the 1986 budget for payroll taxes had no specific basis. It is possible that it should be much larger, but Diaz did not "know exactly the bracket of the taxes in . . . Florida." (Tr. 2794-95)

247. Diaz believes that Southeast will have to conduct a "heavy" advertising campaign to launch its new station -- including billboards, television and radio spots, and bus signs. However, he had no knowledge as to the cost of billboards in Miami-Ft. Lauderdale or the cost of advertising on Miami-Ft. Lauderdale English-language television stations. He made no specific inquiry to determine whether his estimate for advertising expenses was adequate. His only familiarity with the cost of TV advertising in the area was based on rates for a local Spanish language station

which a friend had given to him. Diaz did not know if Southeast proposed to advertise on local Spanish language television stations. Nor did he know whether Spanish language station rates differed from rates of English language television in Miami-Ft. Lauderdale. (Tr. 2732-38; Southeast Ex. 4, p. 6)

248. Diaz stated that his stations spent $300,000 a year in prizes for contests because "all . . . stations need contests to compete for audience these days." Although he did not ask Cohen if Southeast would run contests, he earmarked $26,0900 per quarter for them, under the "advertising and promotion" category. However, he did not explain how this $26,000 allocation could include both contest prizes and advertising. (Tr. 2818-20)

249. Diaz had not seen Southeast's proposed public affairs programming before preparing his operating budget, and he was not told whether Southeast's station would broadcast local news or live sports programming. He was told that the station would be music, news, public affairs, and sports. (Tr. 2735) He was not informed as to the type of format of the music and he was not told how much or what kind of news, sports or public affairs would be broadcast. He concedes that this would cost money and that there is no budget item for live sports. He agreed that certain program formats entail the broadcast of more news than other formats, but he did not know what music format Southeast would use. Also, he did not know whether a network radio affiliation would affect the cost of programming, because his New York and Los Angeles stations were not affiliates. Nor did he know whether Southeast would affiliate. Diaz had no understanding as to how many commercials would be broadcast on the station, nor of how many PSAs would be broadcast. (Tr. 2725, 2734-40, 2797, 2812)

250. Diaz allocated $1,500 for a broadcast line on the assumption that the station would have a mobile unit with small transmitter to cover events. However, he admitted that he did not know whether the station was going to do this sort of programming. (Tr. 2709) However, Diaz's budget omitted the cost of a mobile vehicle for the station's engineering department. The cost would be about $3,000. (Tr. 2759-61) Also, his budget omitted a driver for the station, whose quarterly salary would be $2,700 to $3,000. (Tr. 2782)

251. The $4,000 estimated quarterly cost for business machine rental in Diaz's budget includes a computerized traffic system and reflect's Diaz's experience in New York, where he paid $16,000 per year to rent such a system. Diaz did not explain how his $4,000 total could accommodate both the computerized traffic system and the cost of other business machines which he conceded are also included in his estimate; such as typewriters and copy machines. Recognizing this, Diaz estimated the other business machines could be bought or leased at a cost of approximately $1,000 a month. (Tr. 2754-57, 2808-11; Southeast Ex. 4, p. 5)

252. Diaz specified positions for both a contract engineer and a production engineer. (Southeast Ex. 4, p. 7) He explained that, based upon his experience with a proposed music, news and sports format, there would be plenty of work for one production engineer to be busy every day from Monday through Friday. However, he admitted that he had no idea as to how much programming the proposed station would produce nor whether English language stations produce the same amount of programming as Spanish language stations. (Tr. 2757-59)

253. Diaz increased the amount originally proposed for news service from $1,500 to $5,000. He increased the amount in the event that the station decided to have correspondents in other countries, as he did at his station. (Tr. 2761-62) He did not know if Southeast understood news service to include correspondents in other countries. (Tr. 2798-99) He did not know the basis for the original $1,500 estimate for news service in the old budget and did not ask. (Tr. 2763)

254. Diaz created the position of bookkeeper in the general and administrative department. (Southeast Ex. 4, p. 5; Tr. 2765) In his view, a bookkeeper was needed to prepare invoices and help the traffic staff bill clients. The old budget specified one person as secretary, receptionist and bookkeeper. (Tr. 2766) He also added a number of positions in the sales department, including a secretary and "gopher." (Southeast Ex. 4, p. 7) Diaz opined that at least one secretary was needed to serve the local and national account representatives of the station sales department. He had no understanding why the old budget did not provide for such positions. (Tr. 2767) Diaz also added the position of librarian to the advertising and promotion department. The function of the librarian was to keep the LP's in alphabetical order, to make certain that bad cassettes were replaced, and to pull LP's to meet listener requests. He was not aware of any major market station that did not have someone performing those functions. (Tr. 2769)

255. With respect to the $25,000 for four full-time announcers, listed under the program, Advertising and Promotion Departments, a figure which he left unchanged, Diaz did nothing to verify the availability of persons for that amount because he was never told the station's format. (Southeast Ex. 3, att. 1, p. 3; Southeast Ex. 4, p. 7; Tr. 2811-13) He made no effort to check the salaries for positions in the Miami-Ft. Lauderdale markets. He did not know what a CHR disc jockey makes in Miami-Ft. Lauderdale. (Southeast Ex. 4, p. 6; Tr. 2811-14) All of his figures for personnel were predicated on his familiarity with the Spanish language market. (Tr. 2814)

256. Diaz acknowledged that he overlooked or underestimated a number of items in his budget. As noted, *supra*, he forgot to include a mobile van for the engineering unit at $3,000 (Tr. 2759-61); an amount for additional furniture for the increased office space (Tr. 2789-91); the cost of a driver at about $2,700-$3,000 (Tr. 2782); medical insurance for the increased number of employees (Tr. 2794); and office equipment rental at about $2,700-$3,000. (Tr. 2809-10)

257. Diaz, in his written testimony relative to the estimated operating expenses, averred: "In addition to the operating expenses attached hereto, I estimate construction of the station will take approximately sixty days and about $30,000 will be necessary as costs that may be incurred for post-grant expenses prior to the start of operation." He explained at the hearing that included among those pre-operational expenses would be $4,166 for a person to prepare promotion during the pre-operating period; chief engineer at $4,666; $4,166 each for two disc jockeys; $2,666 for a helper for the chief engineer; $3,300 for an independent contractor to do public relations work; $2,666 for a secretary; $2,766 for a driver, and an additional $1,570 for an expense which he could not recall. (Tr. 2775-85; Metroplex Ex. 81)

(3) The $200,000 Legal Fee

258. The legal retainer agreement with Cohen & Berfield provided that the fee would not exceed $200,000. At the time Southeast exchanged its revised financial proposal as part of its direct written case, all its limited partners had paid in their capital contributions for a total of $200,000. Since that money had been paid to counsel, Southeast appropriately did not earmark any expense for legal costs. (Southeast Ex. 3, p. 2)

(4) The $500,000 Bonus to Counsel

259. The retainer agreement between Cohen & Berfield and the Southeast principals provided (Metroplex Ex. 14, p. 2):

> In the event the Limited Partnership is awarded the authorization to construct and operate the Fort Lauderdale FM station, at the time such grant becomes a final Order, Cohen & Berfield will receive Five Hundred Thousand ($500,000) Dollars as a bonus.

There is no provision to cover this sum in Southeast's revised budget. As fully discussed in paragraphs 216.-220., *supra*, Butler, Southeast's General Partner, did not include the $500,000 obligation in estimating the total expenses to be incurred by Southeast in constructing and initially operating its proposed station, because Cohen had told her that the $500,000 would not be due until three months after the station commenced operations. She also understood that if Southeast was granted a construction permit that the facility would be of such value that it would be able to raise the $500,000.

260. Perry also recalled discussions relative to the $500,000 obligation and his understanding, based on Cohen's assurance, was that the $500,000 would not be due until three months after operations commenced. (Tr. 2554-55) Perry recalled that Cohen told him in 1987, when he was preparing for his deposition, that "subsequent to the station going on the air, we had three months in which to raise the necessary $500,000." (Tr. 2558) Perry had a similar conversation with Cohen in May-June 1986, when the retainer agreement was signed, in which he asked for a definition of the words "at the time such grant becomes a final order" and was told then that "it becomes a final order three months following the . . . commencement of operation of the station." (Tr. 2556-57) In Perry's mind, this means that the station will operate for three months before the grant becomes final. (Tr. 2557)

261. Perry also recalled discussing the $500,000 obligation with Baer and Davidoff in May-June 1986. (Tr. 2555-56) Davidoff, at the hearing, explained that he understood, in May 1986, that it took 90 days for the grant to become a final order. (Tr. 3102) That was not Baer's recollection. When Baer was asked about discussion of the $500,000 obligation, he conceded that in May-June 1986 "[w]e didn't focus on the exact timing . . . ." His understanding, in May-June 1986, as to when the $500,000 would be due was "[o]nly what's in this [retainer] letter." (Tr. 3392) In fact, Baer's memorandum summarizing the May 16, 1986, meeting which is set forth in full in paragraph 144., *supra*, made no mention of the $500,000 bonus being deferred for 90 days. (Metroplex Ex. 25) Baer, however, now understands that a "final order" is "granted after the station's in operation." The basis for that understanding is that Cohen told him within the last six months of 1987 that "the final order was issued after the station was in operation." (Tr. 3392)

262. Katten was also told, but only in late 1987, that three months would elapse before the grant became a "final order." (Tr. 4282-83) Levin was told the same thing in September 1987 (Metroplex Ex. 84, p. 33), and Gerald Cohen was told it in December 1987. (Tr. 3423) In September 1987, when Grossman was deposed, he had no idea when the $500,000 would be due. (Metroplex Ex. 85, p. 31)

263. One fact is clear, and that is both when Butler certified in September 1986 that Southeast was financially qualified and, at the present time, neither Butler or any other Southeast principal has any commitment from any source to provide the funds to meet the $500,000 obligation. (Tr. 2131, 2507-08, 2560, 3369, 3391, 4281, 4334, 4340)

264. Courtney expressed the view that the limited partners are not committed to advance the $500,000. (TR 4339-40) Nor is CMNY. (Tr. 2969) When Baer was asked if the limited partners had discussed where the money would come from to make the $500,000 payment, he replied that "somebody said -- it may even have been me -- that it would be easy to get a bank loan for at least part of the financing needs if we had an attractive license in the Ft. Lauderdale market." (Tr. 3344-45) According to him, he and his associates "sort of agreed that we'd take care of all that when the time came." (Tr. 3391) Katten's understanding is that the $500,000 will be part of the budget and Southeast will fund with whatever financing package it ultimately obtains to construct and operate the station. (Tr. 4281)

265. Perry recalled that he, Baer, and Davidoff agreed in May-June 1986 that it would be the general partner's responsibility to raise the $500,000, but Perry does not know if that was ever communicated to Butler. (Tr. 2559-61) When asked what Butler was told about her financial obligations, Perry replied that, "We very, very closely and carefully spelled out the fact that she would be responsible for all obligations, all debts of the partnership; and, of course, implicit in that is that she would be responsible for the financing that we did and, of course, this $500,000, although we didn't specifically say that to my recollection." (Tr. 2562)

(5) Revised Estimated Cost of Construction - Equipment Costs and Installation

266. As noted, *supra*, based upon information obtained from Metroplex as to required capital outlay costs of approximately $166,000 in connection with Southeast's proposed use of the Gannett site, and other associated lease costs with respect to WHYI's two sites, Southeast proposed a $200,000 figure for transmitter and antenna site costs in its revised budget, resulting in an increase of its construction costs from $225,000 to $425,000. (Southeast Ex. 3, p. 3)

C. Funds Available To Meet Revised Construction and Operating Costs

267. Southeast, in order to meet the higher costs it now estimates it would incur in the construction and initial operation of its proposed facility, obtained a new loan

letter, dated July 29, 1987, from CMNY. The letter is identical in every respect to the 1986 letter, except that it increases the amount of the loan from $600,000 to $900,000. (Southeast Ex. 3, p. 3, and att. 6)

268. The $300,000 increase includes $200,000 to cover Metroplex's site acquisition and rental costs and $100,000 "to provide [a] cushion for other adjustments that we might need to make in the budget." (Southeast Ex. 3, p. 3; Tr. 1869) During a telephone conversation after the financial issues were added against Southeast, Boyce and Butler agreed that the former would contact Davidoff and seek an increased loan assurance. (Tr. 1869-73, 2283)

269. When Boyce contacted Davidoff, a general partner of CMNY, he approved the loan increase without asking for documentation of the need to raise the loan amount. Davidoff was told that there was a need for "further working capital." He did not request any details. (Tr. 3049-52, 3182-83)

270. Davidoff did not discuss his decision to approve the loan increase with anyone at CMNY or with Butler. He never received any written verification that Butler authorized the increase to $900,000. Until the submission of the written testimony of the limited partners in October 1987, in connection with the hearing, Davidoff had no written verification from them that they knew of the revision in the loan amount or that they were willing to provide the necessary guarantees for the higher amount. (Tr. 3052-55)

271. As set forth in paragraphs 142. and 225., *supra*, the commitment for the 1986 CMNY loan letter in the amount of $600,000 was made by Davidoff at the May 16, 1986, meeting in New York. At the hearing, Davidoff explained that CMNY "typically" requests a business plan from a company seeking financing and sometimes balance sheets, profit and loss statements, and projections of future earnings. None of these documents was requested or provided prior to his approval of the Southeast loan at the May 16, 1986, meeting. (Tr. 2832-33, 2934, 3169) Nor did Davidoff, at that time, request any information regarding the financial qualifications of Grossman, Holland, Katten, or Gerald Cohen, the Chicago Group. (Tr. 2898-2900) Davidoff has no specific knowledge as to the "financial condition and repayment ability" of Katten, Holland, Grossman, Gerald Cohen, or Butler. Davidoff has never seen a balance sheet or other documented evidence of financial capability for Perry, Baer, Mrs. Baer, or Levin. He hardly knew Levin when the latter acquired a portion of Baer's interest in 1986. (Tr. 2901-02, 3013-14)

272. Davidoff claimed that he had a "pretty good feeling" regarding the finances of the Southeast partners. (Tr. 3003) However, when questioned as to its basis, he cited "[m]y general knowledge" of Perry, Baer, Levin and Mrs. Baer and the roles they played in the financial community. (Tr. 3004)

273. When counsel proposed a figure of $600,000 for CMNY's financing at the May 13, 1986, meeting, no explanation as to the basis of this figure was requested by Davidoff or offered by Cohen. Davidoff did not request an itemization of the costs represented by the $600,000 request. He personally had no experience with respect to the capital needs of a major-market radio station and made no effort to educate himself at the meeting. Davidoff explained that his decision to become involved in Southeast was based on what he believed to be the intrinsic value of the station which he was told by Cohen to be in the "tens of millions" of dollars. He was told the same thing by Perry. (Tr. 2886, 3186) Davidoff, who had never before met Cohen or Berfield, did not ask whether counsel had any experience in evaluating radio stations' worth, or whether they had ever owned or operated a station. However, he knew that Perry was an experienced broadcaster. (Tr. 3146-48, 3152-53, 3185-87)

274. Davidoff likewise did not ask at the May 1986 meeting about WHYI's revenues, ratings, or Southeast's proposed format or anticipated cash flow. He did not inquire of Cohen and Berfield whether Southeast's proposed station was to be a "start-up" business, or whether they anticipated profits or losses during the initial period of operations. Davidoff was not given a staffing proposal for the proposed station, was not told whether existing management would be retained, and did not ask whether a transmitter site for the proposed station would be available. Davidoff did not consult with anyone else at CMNY as to whether the Southeast 1986 loan was prudent. (Tr. 2935-38) As of the hearing, CMNY had not been furnished any information regarding the financial condition or revenues of Miami-Ft. Lauderdale stations or of WHYI, and Davidoff had never seen any of Southeast's financial documents, such as its estimated costs of construction and operation. (Tr. 3049, 3149-50, 3187)

275. As noted in paragraph 226., *supra*, Butler became aware of the CMNY loan commitment at her June 13, 1986, interview. Davidoff did not, at the June 13, 1986, meeting, ask Butler, before offering her the position, whether she would employ experienced management personnel at the station, although Davidoff acknowledged how important management of prospective portfolio companies is to his company. He disclosed at the hearing that if Butler were not to hire experienced staff, it is "rather unlikely" that CMNY would make a loan to Southeast. CMNY has not yet determined whether the final loan agreement with Southeast will have provisions regarding proposed managerial employees. (Tr. 2996-99)

276. On July 24, 1986, Cohen sent Davidoff a draft of what he called a "swiss cheese" loan letter to be sent by CMNY to Southeast. Davidoff did not discuss the letter with anyone at CMNY or with Cohen, and he made no suggestions for changes in it. Davidoff did not know what the term "swiss cheese" meant and did not inquire; he assumed that it indicated the letter was "innocuous" or "standard." Davidoff, who considered his letter to be a letter of intent, read it carefully, and he intended to be bound by its terms. (Tr. 3031-34) Pursuant to instructions in Cohen's transmittal letter, Davidoff had the letter retyped on CMNY letterhead, without revisions, dated July 28, 1986, and sent it to Cohen, who gave a draft of the letter to Butler at their July 30, 1986, meeting and transmitted the executed version, dated July 28, 1986, to her on August 5, 1986. (Metroplex Exs. 16 and 17; Tr. 3029-32) The July 24 draft was the first Southeast loan letter Davidoff had seen. However, he and Cohen, but not Butler, had earlier discussed the basic parameters of the terms. (Tr. 3000-01) Davidoff typically negotiates with an authorized representative of a borrower. However, he has never been told that either Cohen or Berfield was authorized to negotiate on behalf of Southeast with CMNY. (Tr. 3026-27) Additionally, Davidoff never inquired of Cohen whether Butler approved the letter's terms. (Tr. 3001) Davidoff was told by Cohen in the summer of 1986 that all the partners were willing to meet the collateral terms of the CMNY 1986 loan letter. (Tr. 3156)

277. The last paragraph of the July 28, 1986, CMNY loan letter reads as follows:

> We understand that the FCC does not require a contractually binding commitment from us at this time, and this letter is not such a commitment. We do intend by this letter to assure you and the FCC of our desire and intention to make the loan available on the terms and conditions indicated. Funding of the amount indicated, or any part thereof, will be subject to formal approval by CMNY after its review of Southeast Florida's financial condition and each of its partner's financial condition and repayment ability, and the execution of a loan agreement incorporating those terms and conditions that we may deem appropriate, as well as the availability of funds at the time the loan agreement is executed.

278. Davidoff acknowledged that the final paragraph of the CMNY loan letter was entirely Cohen's language. Davidoff had not approved it in advance of receipt, and he did not ask Cohen what it meant; nor did he consult with CMNY's counsel regarding its impact on CMNY's rights. (Tr. 3002-03, 3028-29)

279. CMNY has not yet determined whether it will charge a loan fee for the Southeast financing. While Davidoff would be inclined to waive the requirement if he had to make the decision now, he was unwilling to give up the option to impose a fee in the future. CMNY does not routinely charge loan fees. (Tr. 3028, 3151, 3189) CMNY will require Southeast to provide a life insurance policy on Butler, although it has not asked for it yet. While Davidoff assumes there will be no problem obtaining the policy, his basis for that assumption is only his experience in other cases. (Tr. 3039-40)

280. CMNY, a Small Business Investment Company (SBIC), is in the business of making investments and loans to qualified small businesses. (Tr. 2828) Davidoff has never been given written or verbal authorization to agree to the Southeast loan by anyone at CMNY. He has never disclosed the loan to any of his colleagues at the company. He believes that such authorization is not necessary because "that's completely in my province." Further, it is not his practice to consult with his partners about potential loans. (Tr. 3047, 3145-46, 3179-80) While it would have been proper practice for Davidoff to have "given a notation" to his accountant to list the loan as a contingent liability of CMNY, that was not done in this case due to "an error in recordkeeping." This failure violates the Small Business Administration's requirements. (Tr. 3146, 3172-80, 4250)

281. Subsequent to the date of the 1986 loan letter, CMNY changed from a corporation to a limited partnership. Davidoff has not consulted the CMNY limited partnership agreement regarding his authority to make investment decisions without consulting the other general partners. However, in his own mind he believes he is entitled to do so based on years of following the practice. He believes that if his partners were not satisfied with his performance, they would notify him. To the best of his knowledge, Davidoff's partners are not aware of his "performance" regarding the Southeast loan. (Tr. 3094-95)

282. Davidoff conceded that it was quite important to CMNY in 1986, and remains important, that it maintain a first security position with regard to Southeast's assets. (Tr. 3103-05, 3154-58) However, Davidoff has never inquired of Cohen or Butler whether the station's equipment will be purchased for cash, on what basis or from whom the equipment will be purchased, and, in particular, whether the supplier will require a first lien on it. CMNY had not imposed a requirement that the equipment be purchased by Southeast for cash. (Tr. 3189-91) Davidoff explained that CMNY would still make financing available to Southeast even if it did not have first position, but "under different circumstances for a different amount of interest." (Tr. 3203-04)

283. Each of Southeast's limited partners, including CMNY, submitted written testimony prepared in October 1987 representing that the partner has made all required capital contributions and that the partner --

> agree[s] to the collateral provisions of the loan commitment letter dated July 29, 1987 from CMNY Capital, L.P. to Southeast.

(Tr. 2613, 3100-01, 3432-33; Southeast Ex. 5) Davidoff had no explanation as to why CMNY was agreeing to guarantee a loan to be made by CMNY. He conceded that, in his years in the investment business, he is not sure he has ever seen someone guarantee a loan to themselves. Davidoff suggested that "we're guaranteeing something, the way I understand it, to Southeast, not to ourselves." (Southeast Ex. 5, p. 9; Tr. 3018-19)

284. CMNY submitted to the Small Business Administration a financial report purporting to show the company's financial position as of May 31, 1987. The report, prepared under Davidoff's supervision, reflects that CMNY had total assets of $52,166,775 and total liabilities of $19,700,379. It further reflects a total of $3,307,969 in "current assets" and a total of $18,102,763 in "current liabilities." (Metroplex Ex. 83; Tr. 3058-60) Davidoff claimed that CMNY has a net worth of $32 million and that CMNY at any time can readily obtain the $900,000 to underwrite the Southeast loan from funds already lent or to be lent by the SBA or CMNY's parent or affiliated companies. CMNY has a $7,000,000 line of credit from the SBA against which it had borrowed $5,600,000 as of May 31, 1987. (Metroplex Ex. 83; Tr. 3079-93, 3151-99)

285. Davidoff maintained that monies already lent by the SBA to CMNY and categorized as "liabilities" on the financial statement constitute funds available for the CMNY loan. (Tr. 3080-84) He also relied on a line of credit that he maintained was available from the SBA. However, he acknowledged that CMNY's financial report on its face does not support this claim. (Tr. 3084) Davidoff expressed the view that there was no question in his mind as to CMNY's ability to honor its commitment to Southeast. (Tr. 3079-87)

IV. Section 317 and 47 C.F.R. 73.1212 Issue

286. As noted in paragraph 5, *supra*, the issues were enlarged to determine whether Metroplex, in the operation of Station WHYI during the period February 1, 1982 to date, violated Section 317 of the Act and/or 47 C.F.R. 73.1212 and, if so, the effect on Metroplex's basic qualifications to be a Commission licensee.

287. WHYI, a Contemporary Hit Radio (CHR) station, played primarily records of the music "sound" and style that characterize CHR music. Frequently, records have appeal across various formats. A particular record having the Black/Urban sound might also be played by a CHR station because it has appeal to CHR listeners as well. Such records are known in the music industry as "crossovers." WHYI frequently included Black/Urban, Adult Contemporary, or, to a lesser extent, Album Oriented Rock (AOR) crossovers on its playlist. (Metroplex Ex. 3, ¶ 5)

A. *Metroplex's Policy and Controls re Sponsorship Identification*

288. Since Metroplex acquired WHYI in 1978, its policy has been that the station and its employees must comply with all applicable FCC rules and regulations, including those pertaining to sponsorship identification of broadcast matter. (Metroplex Ex. 1, ¶ 135) The playing of records on the air in return for payments or gifts from record companies or their representatives has been forbidden. (Metroplex Ex. 2, ¶ 7; Tr. 638) Wain, Metroplex's Chairman and Chief Executive Officer, explained that, even beyond FCC concerns, Metroplex has been especially mindful of "payola" because the playing of records based on clandestine payment to employees harms the station's economic interest in playing only the records that appeal to the station's audience. (Tr. 973, 1014)

(1) *Metroplex Employee Handbook*

289. WHYI's payola policy is set forth in writing in the Metroplex Employee Handbook, which Metroplex adopted in 1978 or 1979 and which describes several important station operating policies that employees must abide by. (Metroplex Ex. 1, ¶ 136 and att. 37; Metroplex Ex. 2, ¶ 8) With respect to "payola," the Handbook states (Metroplex Ex. 1, att. 37, pp. 4-5; Tr. 804):

> *Payola* - Payola is a Federal crime. Section 508 of the Communications Act provides that any radio station employee who accepts money or any other valuable consideration in return for the broadcast of program matter over his station shall disclose that fact to the public prior to such broadcast. Failure to make the required disclosure results in violation of Section 508. The criminal penalties for violation are a fine up to $10,000 or imprisonment for up to one year or both.
>
> The National Association of Broadcasters gives the following examples of payola:
>
> (1) An announcer accepts money, food, payments on his car, or other benefits in exchange for an understanding that he will play certain records in his programs and this fact is not disclosed prior to the broadcast of such records.
>
> (2) An announcer makes a recording for a fee and royalties with the understanding that the record will be played over the station and this fact is not disclosed prior to the broadcast.
>
> (3) An announcer participates in outside activities such as dances or other entertainment, either as a financial backer or a paid performer. In order to increase his income from the event or to insure its success so he will be called upon for other performances, he broadcasts promotional announcements for the event without disclosing his involvement to the public.
>
> Section 317(c) of the Commission's Rules states that "The licensee for each standard broadcast station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with program matter for broadcast, information to enable such licensee to make the announcement required by this section.
>
> The method by which the Metroplex Stations exercise that diligence is to distribute an affidavit to employees with direct or indirect access to programming decisions. The first portion of the affidavit deals with payola and is intended to "prevent, as well as detect, the occurrence of any activity which could be viewed as unethical, improper or unlawful.
>
> In no way should the requirement that the affidavit be signed and returned periodically be viewed as a reflection on any employee's honesty or integrity.
>
> General Managers are required to check on "outside" sources such as talent, suppliers, sales agents and other independent contractors, to ensure that the disclosures required under Section 508 are made as necessary.

290. The Handbook, with this statement of payola policy, was given to WHYI employees when they commenced employment at WHYI. The Handbook emphasized that the guidelines set forth, *supra*, must be "known, understood and accepted" by every employee. (Metroplex Ex. 1, att. 37, p. 4) Additionally, employees were required to acknowledge in writing that they had received the Handbook, would become familiar with its contents, and would comply with the company's policies. (Metroplex Ex. 1, ¶ 136, att. 38; Metroplex Ex. 2, ¶ 8; Tr. 647) However, there was no follow up to ensure that the employees had, in fact, read the Handbook. (Tr. 804) It was also Metroplex's policy to have the General Managers discuss the payola policy with the newly-hired programming employees, such as Program Directors and Music Directors, so as to emphasize to them the importance that Metroplex attached to its payola policy. (Metroplex Ex. 2, ¶ 8) When a new Program Director, Richard Ugarte (Ugarte) was hired at WHYI in August 1986, Ross reviewed the station's policies with him and stressed the importance of ensuring against any payola violations. (Metroplex Ex. 1, ¶ 139; Tr. 645)

(2) *Employee Affidavits*

291. Since 1978, Metroplex has periodically required the execution of payola affidavits by its employees. (Metroplex Ex. 1, ¶ 137 and att. 39; Metroplex Ex. 2, ¶ 9; Tr. 632, 967) The text of the affidavit is as follows:

> 1. I have been employed in radio for METROPLEX COMMUNICATIONS of Florida Inc., since _____, 19 _____.

2. From that date, up to and including the date of my execution of this affidavit, except as hereinafter expressly qualified, I have not done any of the following acts:

(a) I have not solicited, accepted, received or taken, directly or indirectly, any commission, money, property or other valuable thing as an inducement, bribe or reward for doing or omitting to do any act, or for showing any favor or disfavor in relation to the affairs or business of my employer.

(b) Without in any way limiting the scope of paragraph (a) hereof; I have specifically not solicited, accepted, received or taken either personally or through any member of my family, or through anyone acting on my behalf, or through the medium of any organization or enterprise in which I am interested, any commission, money, property or other valuable things as an inducement, bribe, or reward for, or as a condition of mentioning, exhibiting or performing, or causing to be mentioned, exhibited or performed, the name, business, product, work or performance, respectively, of any person, organization or enterprise on any program carried, broadcast or televised by WHYI-FM RADIO.

3. As a condition of my employment at WHYI radio, I will not in the future do any or [sic] the acts referred to in paragraphs 2(a) or 2(b) above.

4. During the aforesaid period of my employment I have not accepted or received any gift of substance or money in any amount except as listed below. In no case did I ever accept any gift or money as an inducement for doing or omitting to do any act in relation to the affairs of [sic] business of my employer.

5. Nothing contained herein is intended to, or shall prohibit recept [sic] or acceptance of anything with the express knowledge and approval of my employer, but henceforth any such approval must be given in writing by someone expressly authorized to give such approval.

292. With reference to paragraph 4 of the affidavit, Ross maintained that it was implicit within the "spirit and intent" of that paragraph that it applied only to gifts of substance or money received to induce the playing of a record. (Tr. 635-36) According to Ross, the affidavit was designed to stress the importance of not accepting valuable consideration for broadcasting something. (Tr. 640-42) Similarly, Ross maintained that the "intent" of paragraph 5 was to require approval only of the receipt of "anything" as an inducement to play records. (Tr. 637) He commented:

> You're not dealing with attorneys here, you're dealing with disc jockeys and people like myself.

(Tr. 638) Nonetheless, Ross agreed that he would have expected disclosure of gifts that were "tempting enough" to be inducement, irrespective of whether or not it was provided in return for the broadcast of something. This was a determination left to the employee's discretion. (Tr. 641-42) The station had not provided its employees any written definition of what constitutes a "valuable thing" or "gift of substance." (Tr. 640-41) No gifts of substance were disclosed in any payola affidavit from February 1, 1982, until shortly prior to Ross' testimony. (Tr. 643-44, 941-42) No written permission has ever been given to permit the receiving of "anything pursuant to paragraph 5 of the affidavit. (Tr. 637)

293. Wain explained that the requirement for employees to execute the affidavit was designed to serve two basic purposes. First, it was meant to ensure that employees remain continuously aware that payola was a major concern of Metroplex. Wain believed that employees got that "message when they had to sign such affidavits periodically, especially since "payola" and "plugola" were the only matters about which Metroplex regularly required its employees to give affidavits. The second purpose of the payola affidavits, according to Wain, was to ascertain any instances in which employees received valuable consideration from record companies or others as consideration for playing records on the air. Wain further explained that by requiring employees to disclose a violation under oath, Metroplex sought not only to learn of a violation should it have occurred, but to further discourage an employee from committing a violation in the first place. (Metroplex Ex. 2, ¶ 9)

294. In Wain's view, the operative word in paragraph 4 of the affidavit which refers to "gift of substance" is the word "inducement. Wain acknowledged that the term "gift of substance" is a highly subjective matter, but emphasized that Metroplex meant a gift of substance which would be an inducement. (Tr. 942-43) With respect to the disc jockeys, Wain considered a gift of substance" to be something that would risk their jobs or their careers, or besmirch their name in the industry. According to Wain, it would have to be something "pretty big." Disc jockeys were told that a gift of substance would be "something strictly out of the ordinary. (Tr. 943-44) Wain acknowledged that the licensee did not make any effort to make the standard less subjective, leaving it to the judgment of the Manager, the Program Director or the other people at the station. (Tr. 943-44)

295. Wain talked to station employees "many, many times, advising them that a "gift of substance" would be "something strictly out of the ordinary." He identified one such meeting in June or July 1987, after "payola" had been raised in this proceeding. Another meeting he identified was a December 9, 1986, meeting of Metroplex Program Directors in Orlando. He was uncertain whether Robert Walker, then WHYI's Program Director, was present at that meeting. (Tr. 942-48)

296. Wain was of the view that receipt of a significant quantity of drugs would constitute a gift of substance, reportable on the payola affidavit, irrespective of whether it was in return for air play, since the purpose of the affidavit was intended to prevent "impropriety" as well as conduct illegal under the payola statute. Wain felt that this was implicit in the affidavit and the Handbook. (Tr. 981-85)

297. Metroplex principal Weiss conceded that the payola affidavit contained no explanation or definition of such terms as valuable thing or gift of substance. (Tr. 1360) He acknowledged that these concepts were not defined in terms of a dollar amount but by a rule of reason looking to whether the gift might turn someone's head, look bad or cause improper actions. (Tr. 1360-62) Weiss

opined that the receipt of drugs from a record industry source for recreational drug use should be reported on the payola affidavit, since that would be something management would like to know about. He indicated that receipt of drugs would not necessarily induce the employee to do something; however, it was something they would like to know about. (Tr. 1368-70)

298. With reference to paragraph 4 of the affidavit, Weiss agreed that the first sentence as written required disclosure irrespective of whether there was an inducement to do something. He noted, however, that the second sentence was conditioned on the acceptance of items as an inducement. He suggested the two sentences should have been joined together by the word "and." (Tr. 1370-71; 1373-74) He was unaware whether this was explained to Metroplex employees. (Tr. 1374-75) However, he agreed that a gift of $500 from a record representative would have to be reported irrespective of whether it was an inducement. He suggested that a rule of common sense would govern. (Tr. 1375) He indicated with respect to gifts valued at $100 that such gifts would require disclosure irrespective of whether there was an inducement. (Tr. 1377)

299. WHYI employees have been required to execute such affidavits at least every six months. (Tr. 966-67; Tr. 1116) Approximately 400 signed affidavits have been obtained over the years. (Metroplex Ex. 1, ¶ 137)

300. Frank Amadeo was never told orally or in writing what constituted a gift of substance. (Tr. 1120) The term valuable thing was never defined in writing or orally except that Ross told him a record company could not pay for trips. (Tr. 1128-29) Robert Walker had no recollection of discussions with management relating to the purpose and scope of the affidavit. (Tr. 1706-08)

(3) *National Association of Broadcasters' (NAB) Memorandum*

301. In late 1979, WHYI distributed to its employees a memorandum issued by the National Association of Broadcasters (NAB) addressing the subject of payola. (Metroplex Ex. 1, p. 76) The memorandum was distributed pursuant to a December 17, 1979, letter from Wain to Ross in which he instructed Ross to have the entire air staff read the NAB memorandum and sign documents acknowledging that they had read it and "thoroughly understood it. Ross was to discuss it with them if they did not. (Metroplex Ex. 1, att. 40, p. 1; Metroplex Ex. 2, ¶ 10)

302. The NAB memorandum was again distributed to WHYI's employees in April 1986. The memorandum had not been distributed during the period 1980-April 1986 because there was almost no turnover of air staff during that period. (Tr. 805) Following media reports of alleged "payola activity in the broadcast industry, the need to maintain continuing payola controls was discussed at a meeting of all Metroplex station General Managers in April 1986. After the meeting, Wain sent copies of the NAB payola memorandum to the General Managers with instructions to have their staffs review it. (Metroplex Ex. 1, ¶ 138 and att. 41) Wain expressly cautioned that although the NAB memorandum had been written in 1979, "the rules have not been changed." (Metroplex Ex. 1, att. 41) Ross, in turn, distributed the NAB memorandum to WHYI's Program Director, Robert Walker, and Music Director, Frank Amadeo, with instructions to:

> [M]ake sure and read the attached NAB notice on Payola and Plugola. You should keep copies of this in your file and please share this information with all the disc jockeys in your next meeting.

(Metroplex Ex. 1, ¶ 138 and att. 42, p. 1) Ross also gave instructions that the station's air personalities acknowledge in writing that they had read the NAB memorandum. Signed acknowledgments were obtained from employees attesting that they had read and understood the memorandum. (Metroplex Ex. 1, ¶ 138 and atts. 41-44) Walker distributed the NAB memorandum to the disc jockeys, as instructed. (Tr. 1716)

303. In August 1986, Ross provided a copy of the NAB memorandum to Ugarte, the station's newly-hired Program Director, and told him to read it. (Tr. 645) In early 1987, Ugarte distributed the NAB memorandum to all the disc jockeys at a staff meeting. (Tr. 645-46)

304. Wain explained that Metroplex distributed the NAB memorandum not as Metroplex's statement of "payola" policy, but because he felt it would be useful in focusing the attention of Metroplex's employees on areas where they should be careful. He also felt that the memorandum would create an atmosphere that would reemphasize to employees Metroplex's concern about "payola." (Metroplex Ex. 2, ¶ 10; Tr. 1013)

305. The NAB memorandum, dated November 1979, was written by Jason Shrinsky (Shrinsky). It is headed "Counsel from the Legal Department" and is based on a presentation made at the NAB Radio Programming Conference of September 10, 1979. (Metroplex Ex. 1, att. 40, p. 2) As noted, Shrinsky was and is an attorney for Metroplex. The NAB memorandum contains various hypotheticals, including the following:

Question :	If a record company flies a program director and his wife to another city to see its artist in concert, is that considered payola?
Answer :	Probably yes. A trip to Las Vegas to see the opening of a particular artist's show constitutes payola to the powers that be at the FCC. The same would be true if a record company flies a program director, announcer or music director to another city to see a sporting event or to purchase a new wardrobe.
Question :	Can a program director accept gifts from record companies for Christmas and if so, is there a value limit on them of $25?
Answer :	As a general matter, a program director can accept a gift at Christmas time. *The $ 25 limitation is arbitrary but nevertheless, has come to be a standard of the industry.* The rationale being that the more expensive the gift, the greater the inducement to "return the favor" to the record company so that the record company, rather than the program director, becomes the benefactor. In other words, a Christmas gift should be a reasonably priced, as opposed to a luxury item. *However, any gift received by any disc jockey, program director and / or music director should be reported to the station's management.* " (Emphasis added.) (Metroplex Ex. 40, att. 40, p. 3)

306. The NAB memorandum, in pertinent part, recommended (Metroplex Ex. 1, att. 40, p. 7):

> *Procedures for the Music Committee or Program Director.* Most stations have a Music Committee or Program Director appointed by the General Manager who is responsible for meeting with representatives of record companies. No record promotion personnel are seen except on the scheduled day. *A log might be kept (see Attachment A) of the name of each promotion person, record company represented, date and time seen, and whether a gift was presented. Even gifts of nominal value (calendars, coffee cups, ash trays, etc.) are entered on the log.* The log is signed by the person keeping it, which generally will be the Music Director or Program Director. However, when any employee receives a gift from a record company (for example, a Christmas gift for the Program Director), the recipient is expected to make the appropriate entries on the gift logs and sign in the appropriate space. The logs might be inspected weekly by the General Manager and reasons for any inordinately long visits or large gifts should be explained and accounted for by the Music Committee or Program Director. (For other suggestions on dealings with record companies and record promoters, see Appendix IV-I of the NAB Legal Guide.) (Emphasis added.)

Attachment A referenced in the above paragraph is a sample form of a worksheet and log designed to record the name and record company affiliation of any visitor, the date, time in, time out and any gift brought. It was to be certified correct by the employee responsible for maintaining it. (Metroplex Ex. 1, att. 42, p. 9)

307. Ross expressed the view that the NAB memorandum did not reflect WHYI's policy *in toto*. He believed the NAB memorandum to be too conservative and unduly impractical and far too cumbersome. (Tr. 648-51) Ross believed the suggestion re a log of visits by record company people visiting the station would be far too cumbersome. Ross believed that portions of the NAB memorandum were unclear. (Tr. 654) He had many problems with the NAB memorandum; however, he never advised anyone in writing of these problems. (Tr. 656)

308. Wain confirmed that the NAB memorandum was not Metroplex's payola policy, and explained that it "took an extremely conservative approach in many respects . ." (Metroplex Ex. 2, p. 6) He did not advise anyone in writing of his reservations. He believed that the NAB memorandum went far beyond the definition of payola, and that it was superfluous since the station already had an effective payola policy. He thought the NAB memorandum's proposed restrictions on visits by record company representatives and proposed logging requirements were cumbersome. (Tr. 951-53) With reference to the $25 limit on gifts from record company representatives indicated by the NAB memorandum, Wain indicated that he didn't know whether Metroplex ever had a specific amount as a guideline. He did not "necessarily" think that $25 might have been a guideline in 1978. No specific guideline was ever put in writing for WHYI. (Tr. 955-56) Weiss indicated that while there was no dollar amount in Metroplex's policy, the $25 limit is a guideline that the station would like to stay within, and above that a rule of reason would apply. (Tr. 1360-62)

(4) *Corporate Efforts to Safeguard Against "Payola"*

309. Periodically, Wain issued memoranda emphasizing the need to maintain effective controls to safeguard against "payola violations. In September 1984, Wain sent the following reminder to all Metroplex General Managers (Metroplex Ex. 1, att. 45, p. 1, emphasis in original):

> *Payola - Conflicts of Interest* - All new employees must execute an affidavit acknowledging their understanding of and compliance with the policies of the FCC and Metroplex with respect to payola, plugola and conflicts of interest. We would like these affidavits executed every six months by *all* employees. If you do not have the affidavit currently in use, please call me. I'll be glad to send it to you.

In October 1984, Wain sent to all the General Managers copies of the Metroplex Employee Handbook for distribution to each employee, with instructions that all personnel read it and sign the certification page. (Metroplex

Ex. 1, att. 46) Again in January 1986, by memorandum, he asked the General Managers to be sure that all new employees had received and read the Handbook. (Metroplex Ex. 1, att. 47) In April 1986, he followed up a meeting of the General Managers with another memorandum directing that all new employees read the Handbook and that the managers make sure that all employees have signed the "payola" affidavit. (Metroplex Ex.1. att. 49, p. 2)

310. When the subject of payola received attention in the trade press in early 1985, Wain wrote to all Metroplex General Managers urging them to "re-double our efforts to make absolutely certain" that "payola" not occur at Metroplex stations. Wain wrote on April 13, 1985 (Southeast Ex. 11, p. 1):

> To this end, I want to recommend that you continue to make sure that all new employees sign the Payola affidavits. If the present employees have signed them, make sure that those payola affidavits are signed every six months.

The memorandum also directed the General Managers to continue using the committee system for deciding what records should be added to the playlist. Ross responded with a letter to Wain confirming that WHYI was regularly obtaining payola affidavits from its employees. (Metroplex Ex. 62)

311. In March 1986, Wain sent a memorandum to all Metroplex General Managers, Program Directors, and Promotion Directors, enclosing a recent *Wall Street Journal* article about "payola" allegations in the industry. The memorandum stated (Metroplex Ex. 1, att. 48, p. 1; emphasis in original):

> Obviously Bob [Weiss] and I have absolutely no reason to believe that any Metroplex radio station has anything to worry about in the area of payola. However, as a precaution we would like you to give copies of this article to all deejays. Please discuss this memo and the article at the next meeting of your department heads. And, please make sure that a current copy of the Payola Affidavit is in everyone's personnel file.
>
> Payola is serious business. And, in this era of increased deregulation we know from personal experience that the FCC is more zealous than ever in enforcing the remaining rules and regulations. *The FCC has never rescinded the payola rules.*
>
> If you have any questions at all about this area, please call me. We don't want to be associated with any sort of conduct which can be construed as improper where the relationship with promoters or record companies is concerned.

312. As part of its program of supervision and control of its various radio stations, Metroplex held periodic meetings of all of its General Managers. Usually there were three or four such meetings every year. Ross, as General Manager of WHYI and Executive Vice President of Metroplex, attended these meetings. At these meetings, among other things, Wain reviewed with the General Managers Metroplex's policies in key areas of FCC compliance. The subject of payola was discussed at many of the meetings. (Metroplex Ex. 2, ¶ 11; Metroplex Ex. 63) A payola discussion took place at the April 1986 managers meeting. (Metroplex Ex. 1, att. 41 and 49) In addition to these meetings of Metroplex General Managers, Wain held a meeting in Orlando in December 1986 with Metroplex's Program Directors, including WHYI's Ugarte (Rick Stacy) at which the subject of payola was discussed. (Tr. 947-48, 1012)

313. Wain frequently emphasized to Ross in person and in telephone conversations the need to maintain strong and effective controls to safeguard against payola violations. (Metroplex Ex. 1, ¶ 139; Metroplex Ex. 2, ¶ 11) Ross, in turn, had discussions on the subject with WHYI employees. (Metroplex Ex. 1, ¶ 139; Metroplex Ex. 3, ¶ 38) In August 1984, following a *Los Angeles Times* article about possible "payola," Ross met with Robert Walker, then WHYI's Program Director, to determine whether Walker was in any way involved. (Tr. 682-84; Metroplex Ex. 1, att. 50) Ross asked Walker whether he did drugs with record company representatives. Walker looked Ross "straight in the eye" and said no. (Tr. 684) He held a similar discussion with Walker in March 1986, following an NBC News story about "payola" allegations. Again, Walker told him that he was not doing drugs with record company representatives or employees. (Tr. 686-88; Metroplex Ex. 2, ¶ 14) Yet again in June 1987, Ross asked Walker if he participated in drug use with record company representatives or employees, and Walker denied "vehemently" being involved in any drug use. (Tr. 688-691) Ross also questioned Amadeo, WHYI's Music Director, in March 1986, to determine whether Amadeo was involved in drug use with record company representatives. Amadeo answered in the negative. (Tr. 691) Ross' role relative to the Grammy Awards incident is discussed, *infra*.

314. After a local newspaper story in March 1986 suggested that WHYI's Program Director, Robert Walker, may once have been offered "payola," Wain instructed Ross to discuss the matter thoroughly with Walker to determine whether any such thing had happened. After the discussion with Walker, set forth *supra*, Ross reported to Wain that he was satisfied that Walker had done nothing improper. (Tr. 1711, 1769-71) Thereafter, Wain sat in, by speakerphone, on an interview of Walker by the FBI about a week after the appearance of the newspaper story. The FBI told Wain that neither Walker nor WHYI was a target of its investigation, but that it was simply seeking information from Walker because his name had appeared in the newspaper story. Walker's responses to all questions at the interview gave Wain no basis to believe that Walker had ever taken payola or improperly affected WHYI's music playlist. As far as Wain knows, the FBI has made no further inquiries of Walker, nor has the FBI contacted WHYI since interviewing Walker. (Metroplex Ex. 2, ¶ 14)

(5) *WHYI's Music Selection Process*

(a) *Music Committee Structure*

315. The selection of music to be played on WHYI was made each week by the station's Music Committee, which has been in place since Metroplex acquired WHYI in 1978. The members of the committee were the Program Director, Music Director, and Music Research Director.

In times past the position of Assistant Program Director was held by a fourth person who would attend Music Committee meetings. Frank Amadeo presently hold the positions of Music Director and Assistant Program Director. Meetings of the committee were open to any other station employee who wanted to attend. It was the committee's function at each weekly meeting to make decisions in two areas: (1) which new records to add to the playlist and, conversely, which old ones to drop; and (2) the "rotation" of each record on the playlist, namely, how frequently and during which parts of the day to play each record. These decisions were made after discussion among the committee members. In the case of new releases being considered as possible "adds," the committee members also listened to those records at the meeting. Most of the time the discussion resulted in agreement among the committee members as to record rotation and what records to add. In cases where there was disagreement, the members of the committee discussed their differences before a decision was made. (Metroplex Ex. 3, ¶ 8) The Program Director had the final decision. (Metroplex Ex. 1, ¶ 140; Metroplex Ex. 2, ¶ 12; Tr. 1165-66, 1232)

316. The committee system was designed to minimize the possibility of payola influence by involving more than one person in the decision making process. (Metroplex Ex. 1, ¶ 140; Metroplex Ex. 2, ¶ 12; Metroplex Ex. 3, ¶ 8; Tr. 893-94, 1165)

(b) *Record Selection Criteria*

317. WHYI, a top 40 radio station, played familiar hit records and familiar hit artists. (Tr. 146) It was known as a Contemporary Hit Radio (CHR) station. (Metroplex Ex. 3, p. 4) The WHYI Music Committee applied objective and subjective criteria in making selections. The regularly applied criteria included the following: local popularity of a record as indicated by record sales in the area and by WHYI's call-out research; the extent to which WHYI listeners were calling in to request a record; the current position and trend of a record on national charts, published in the weekly trade press; the air play being given to a record by stations having the same format as WHYI in its market and other markets, especially with comparable demographics; the popularity a record was demonstrating on television music video programs or as part of a current hit movie; the subjective judgments of those on the Music Committee as to the quality of a record and its likely popularity with WHYI's listeners; the achievement of a proper blend of music sound to appeal to the tastes of all segments of WHYI's audience; the current topicality of a particular song or artist by reason of a news event, local concert appearance, etc.; the involvement or expected involvement of an artist in an upcoming WHYI local concert presentation; the reputation and history of chart success of an artist whose record had been released; and the input from WHYI's professional independent programming consultant paid by the station to review and comment on WHYI's music selection. The station's music selection decisions were made by combining and weighing these criteria together. (Metroplex Ex. 1, ¶ 161; Metroplex Ex. 3, ¶ 9; Tr. 1285-88) Amadeo had the initial responsibility of bringing records to the attention of the committee for their consideration. Ross acknowledged that the criteria changed from time to time. (Tr. 657)

318. Ross, WHYI's part-owner and General Manager, characterized the application of these criteria as both an art and a science. Ross explained that selection of music that had gained or was about to gain widespread popularity was essential to WHYI's success; if WHYI played music that large numbers of listeners did not want to hear, the listeners would quickly turn to another popular music station in the market; if WHYI was too late in adding a record that large numbers of listeners wanted to hear, the listeners would have turned to another station in order to hear that record. In Ross' view, because loss of listeners means loss of ratings, with resultant loss of advertising revenues for the station, WHYI could not play the wrong records and succeed in a competitive market. (Metroplex Ex. 1, ¶¶ 158-160)

319. Amadeo, WHYI's Music Director and Assistant Program Director, agreed with Ross that, because WHYI's success was dependent upon its appeal to listeners, it was essential to provide listeners with the music they wanted to hear when they wanted to hear it, as well as to predict what records listeners would find appealing before their popularity was fully established. (Metroplex Ex. 3, ¶ 4) Both Ross and Amadeo stressed the importance of judgement or intuition in selecting the music to be played on the station. (Metroplex Ex. 1, ¶ 160; Metroplex Ex. 3, ¶ 9)

(c) *WHYI's Playlist*

320. WHYI's weekly playlist was a listing of all of the current records that the station played in regular rotation that week.[20] The number of records on the playlist each week has varied over the years. At times in the past WHYI had listed 40-45. The playlist presently includes the "Top 30," (formerly the Top 40), which are the 30 songs that WHYI has determined are the most popular current hits in its market. In addition, the playlist includes several other current records which, although not ranked in the Top 30, are deemed to merit limited airplay; these unranked records are denominated on the playlist as "adds" or "on." (Joint Ex. 2, ¶ 2 and pp. 3-4; Metroplex Ex. 1, att. 75, p. ii) The relative numerical ranking of the Top 30 records on the playlist reflected WHYI's assessment of their relative popularity in the market. The playlist ranking did not necessarily reflect the amount of airplay that WHYI was giving each record in relation to the other records on the list, although new records generally received less airplay than established hits, and records that were on the playlist but not ranked on the Top 30 chart were not played heavily. (Tr. 714-15, 1147; Metroplex Ex. 3, ¶ 7; Tr. 1671-72)

321. WHYI's weekly playlists, along with those of other stations nationwide, were and are published in *Radio & Records*, a weekly trade publication that charts popular music based on information it gathers each week from radio stations throughout the country. In addition to the playlists of individual stations, *Radio & Records* shows how many reporting stations are playing a particular record and where the record ranks on the national chart. *Radio & Records* is regarded in the radio and music industries as an authoritative source on the current performance and popularity of particular records both nationally and in specific radio markets around the country. (Joint Ex. 2, ¶ 2; Metroplex Ex. 1, att. 75, p. i; Tr. 1660-61)

(d) *Record Rotations*

322. The "rotation" of a record refers to the frequency with which it is played and the dayparts during which it is played. (Metroplex Ex. 3, ¶ 8) The more popular records are played more often than the others. WHYI's

rotation categories included: "Powers," the 5-8 most popular records, which were played with the greatest frequency; "subpowers," which were approximately 13 records, were played less frequently than "powers; and new records, which were played less frequently than "powers or "subpowers." (Tr. 1146-47) Because the composition of WHYI's audience varied at different times of the day, some records were played only in certain dayparts to appeal to a particular audience. For example, a record that appealed to teenagers but not to housewives might be played in the morning before school hours, when teenagers are listening, but not during midday hours, when housewives are listening. (Tr. 974, 1666-67)

323. There were two basic rotations: 5:00 a.m. to 10:00 p.m., which primarily included the top 30-35 records plus adds and ons and a second rotation from 10:00 p.m. to 5:00 a.m. during which time there were fewer commercials and thus more time to experiment by also playing test records. (Tr. 1148, 1289-90) The decision to put test records, which were each played at least once each night, on the air was made by the Music Committee at its weekly meeting. It was felt that it was not possible to get much of a listener reaction if the test record were played less frequently. (Tr. 1150) The criteria for selecting the test records was similar to those used for the regular records, the most important being the subjective opinion of committee members as to the potential appeal of a record. (Tr. 1285) These test records were also programmed into the computer to determine when during the 10:00 p.m. to 5:00 a.m. rotation period they were to be played. (Tr. 1157) During the period from January 1983 to June 1984, there were approximately 180 test records broadcast. (Tr. 1291)

324. At its weekly meeting, WHYI's Music Committee decided the rotation category to which each record on the week's playlist would be assigned. (Metroplex Ex. 3, ¶ 8; Tr. 1148) That information was fed into the station's computer, which then scheduled the order of play. (Metroplex Ex. 3, ¶ 10; Tr. 1147-48, 1672-73)

325. The computer programming for the scheduling of records worked in the following manner. Each hour of the day was broken into segments. Categories of records, not specific records were assigned to each of the hourly segments. Also in the computer was a list of records for each of the categories. Based upon the input to the computer program, the computer then identified the specific records to be played. (Tr. 1672-73) Music Director Amadeo prepared and Program Director Walker approved a sheet called the "music log" which then instructed the disc jockeys which records to play and when. The records to be played were converted into cartridges for use by the disc jockeys when they were on the air. The disc jockeys were allowed virtually no discretion to play records that were not in the music log or to play records in different order from that listed on the music log. (Metroplex Ex. 1, p. 78; Metroplex Ex. 3, ¶ 10) The only exceptions were that (1) if a disc jockey received numerous listener requests for a very popular record, he might play that record more frequently than the music log prescribed in order to satisfy the listener requests (Tr. 1676, 1737), and (2) if it developed that not all of the prescribed records could fit into the hour in which the computer had scheduled them, the disc jockey might make the necessary adjustment by dropping a record, usually an "oldie. (Tr. 1738) Walker acknowledged, however, that it was physically possible for a disc jockey to play a record cartridge other than that programmed by the computer and listed on the music log. There were no physical controls to prevent it and it was Walker's job to monitor such matters. (Tr. 1676, 1737-38) Walker, WHYI's Program Director from the beginning of 1983 until June 1986, maintained that he constantly monitored the on-air performance of his disc jockeys and was aware of no instance in which any of them abused this system. (Tr. 1739)

(e) *WHYI's Program Consultant*

326. As a further effort to safeguard against payola violations, WHYI relied upon a paid professional programming consultant. From 1983 until latter 1986, the consultant was the firm of Burkhart, Abrams, Douglas, Elliot and Associates, Inc. (Burkhart, Abrams). In latter 1986, WHYI retained the firm of Jon Sinton Associates as its consultant. Jon Sinton is a former employee of Burkhart, Abrams. The consultant reviewed WHYI's playlist on a weekly basis with the station's music selection personnel, discussed with them the records being considered for addition to the playlist, and made recommendations about what records to play and what records not to play. Because, in Metroplex's view, the consultant was thoroughly familiar with the music played by WHYI and the music played by stations with similar formats around the country, Metroplex had confidence that the consultant would detect any "suspicious" additions to WHYI's playlist and alert WHYI's management. (Metroplex Ex. 1, ¶ 141; Metroplex Ex. 2, ¶ 13; Tr. 897)

327. On one occasion in August 1984, after a newspaper reporter had suggested that WHYI was involved in possible "payola," Ross specifically discussed the matter with WHYI's programming consultant, Dwight Douglas (Douglas) of Burkhart, Abrams. Ross, on the basis of that discussion, concluded that WHYI was free of any violations, but asked Douglas to report to him on Douglas' weekly programming discussions with WHYI's Program Director, Walker. In relying upon Burkhart, Abrams to be alert for indications of any payola violations at WHYI, it was Metroplex's understanding that Burkhart, Abrams was familiar with the FCC's "payola" rules, as demonstrated by the "payola affidavit" executed by Burkhart, Abrams in conjunction with the playlist worksheets that WHYI received from that firm monthly. (Metroplex Ex. 1, att. 50-51; Metroplex Ex. 2) The "affidavit" is not an affidavit or a declaration under penalty of perjury. It relates only to the consultant's own obligations and does not establish its ability to detect payola at the station or its intention to be alert for such violations. Sinton, the present consultant, is not required to provide this "affidavit." (Metroplex Ex. 1, p. 80) In this respect, Burkhart, Abrams supplied a weekly worksheet setting forth its playlist and rotation suggestions. Amadeo acknowledged that this would not be useful in detecting payola, except in the event of an "outlandish" discrepancy between the worksheet and the WHYI playlist. (Tr. 1234) This "affidavit was the basis for concluding that Burkhart, Abrams was fully aware of the payola rules and gave Ross confidence that the firm would be alert for any payola violations at the station. (Metroplex Ex. 1, ¶ 141 and att. 50)

B. *Employees' Understanding of WHYI's " Payola " Policy*

328. Frank Amadeo maintained that Ross had always been adamant with the station's staff that any form of payola was unacceptable and would not be tolerated. According to Amadeo, in addition to requiring periodic

payola affidavits, and distributing memoranda on the subject. Ross, over the years, had stressed the station's policy at staff meetings and in discussions he has had with them. As a result, Amadeo had never been in doubt that it was contrary to station policy to play any music on the air in return for receiving something from a record company. (Metroplex Ex. 3, ¶ 38; Tr. 1124) Amadeo asserted that he had never violated this policy and that he knew of no instance where any other employee had violated it. (Metroplex Ex. 3, ¶ 38) Amadeo further explained that it was his understanding that "it was Metroplex policy that we were not to accept any sort of gifts or anything, you know to induce us in any way." (Tr. 1124) He acknowledged that there was no specific Metroplex policy as to what was permissible and what was not permissible in terms of dollars. (Tr. 1140) He said that determining whether a gift was valuable required a subjective determination and depended on what the gift was. (Tr. 1305-06) Amadeo considered a $100 watch and, probably, a $50 watch to be valuable, but not a $25 watch. (Tr. 1138-40) As a further illustration, he considered a stereo system to be valuable but not a pocket radio. (Tr. 1306) He considered electronic equipment, trips, and expensive jewelry to be valuable. (Tr. 1124) Had he been tempted to accept any gift that he thought to be of value, he would have consulted with Ross to see if it was allowed. (Tr. 1138-41) Amadeo admitted that he had received birthday and Christmas gifts from Margaret Ann Ronayne, who promoted records for Motown, and also from Steve Jones, a record representative for Atlantic records. Amadeo explained that they had been close personal friends and that their families had exchanged gifts for quite some time. He did not note the gifts on his affidavits because he did not consider them to be an "inducement." (Tr. 1130-32)

329. Robert Walker recalled an occasion where he was asked by Ross if he engaged in "payola." This was at a time when the matter was being discussed in the trade press. (Tr. 1709-10) He did not recall being asked any questions about his affidavits when they were submitted by him. (Tr. 1712) His understanding of the "payola" affidavit was that it "was a document swearing that he was not receiving unduly valuable consideration or valuable consideration as an inducement for playing records on Y-100." (Tr. 1713) He explained that the only consideration that ever concerned him was "whether Y-100 or |he| indulged in practices of putting records on the air in return for anything other than the normal criteria for airplay on Y-100". (Tr. 1598) It was clear in Walker's mind while he was Program Director at WHYI that the management of Metroplex would not tolerate payola. (Tr. 1764)

330. According to Walker, any sum of money or any gift that was extravagant, unusual, or outside the realm of normal business promotion in the radio and record industry "[w]ould have rung a bell" with him as constituting what he understood to be "payola." (Tr. 1714-15) However, he did not attribute a dollar value to what constituted a gift of substance: "It was strictly a personal judgement type of thing. The situation didn't occur where I had to, in my estimation, make that kind of judgment. I was not being given televisions . . . ." (Tr. 1712) Explaining why he never reported anything on his payola affidavits, he said: "There was never anything that rang a bell with me. There was nothing extravagant that I could think of to put on these affidavits and so I never put anything on them . . . ." (Tr. 1730)

C. *Management's Understanding of WHYI's " Payola " Policy*

331. According to Ross, WHYI's General Manager, the "spirit and intent" of the payola affidavit was "to prevent the inducement of taking something in order to play a record on the air." (Tr. 635) He was of the view that a gift of substance was to be disclosed to management even if it was not given in return for broadcasting something on the air. In Ross' words, "if someone gave the program director a Cartier watch, he'd better tell me about it." The criterion for disclosure to management, according to Ross, was whether, in the employee's judgment, the gift was "something that would be tempting enough for an inducement to play a record. (Tr. 641-42)

332. Wain, Metroplex's Chairman and Chief Executive Officer, expressed the view that what the "payola" policy was aimed at preventing was "inducement." (Tr. 943) He explained: "We don't want valuable considerations to be in return for the broadcast of program matter." (Tr. 959-60) The payola affidavit, according to Wain, required employees to report any gift of substance or money, even if it was not an inducement to play records. (Tr. 961-62) Receipt of a valuable gift would be "fraught with impropriety" even if it were not an inducement, and he would have wanted to know about it. (Tr. 960-61) He acknowledged that the question of what constituted a gift of substance was for the subjective determination of the employee, and that employees were to use common sense in the area of payola. (Tr. 943-44, 958) They had been told not to accept any gift that was unreasonable. (Tr. 962)

333. Weiss, Metroplex's President, opined that the reporting standard for the payola affidavit was "common sense -- a dollar amount, applying the rule of reason, and what the purpose of the gift was, whether it was a singular gift or whether it was a promotional item or whatever it was." (Tr. 1381) A gift of substance was to be reported, according to Weiss, even if it was not an inducement. (Tr. 1375, 1376-77) He explained: "We would want it reported because we don't know if it's an inducement. So we would want to have it reported." (Tr. 1380)

D. *Role of Record Company Representatives*

334. WHYI had ongoing business relationships with various record companies that produced and/or distributed the recordings of the artists whose music is broadcast over the station. (Metroplex Ex. 1, p. 80) These relationships were generally conducted with employees of record companies or independent agents who promoted the records of their company in WHYI's region. (Metroplex Ex. 1, ¶ 142; Tr. 721) The role of the record company representatives was to make the radio stations aware of his or her company's new releases and to get the station to listen to the new releases. This public relations activity entailed frequent contact between record company representatives and station personnel who were involved in the station's music selection process, normally the Program Director and the Music Director. Amadeo met with these record representatives on behalf of WHYI. (Metroplex Ex. 3, ¶ 11)

335. The major record companies in the industry employed or retained these representatives to work with the Florida radio stations. (Metroplex Ex. 3, ¶ 11) Every week between 75 and 100 newly-released records and/or albums containing multiple songs come into radio stations. With so many new records competing for their attention, radio

station Program Directors and Music Directors cannot listen to all of them to evaluate them for potential airplay. The job of the record company representative is to make radio stations aware of his or her company's new releases and get stations to listen to the records. This involves informing stations of newly-released records, making sure that station personnel are provided with promotional copies of each new record, talking to station personnel about the merits of such records, providing information about how the records are doing in other markets, and promoting the stations to listen to the records and consider giving them airplay. This public relations activity entailed frequent contact between record company representatives and station personnel who were involved in the station's music selection process, normally the Program Director and the Music Director. Telephone discussions were common. Record company representatives also visited stations fairly regularly to talk with station personnel. Occasionally discussions between them occurred at business lunches or dinners. (Metroplex Ex. 3, ¶ 11)

336. At WHYI, record company representatives worked primarily with the Music Director, Frank Amadeo, who was in contact with one or another record company representative every day. Such contacts between record company representatives and station personnel were a common and ordinary business practice in Florida. (Metroplex Ex. 3, ¶ 12; Tr. 661-62, 1652-53; *see also*, ruling at Tr. 1085-86)

337. It is appropriate to consider WHYI's position vis-a-vis the record industry. WHYI is a Parallel One radio station. These are a group of 25 to 27 stations in major markets that are among the most influential stations. (Tr. 716-17) Playlists of Parallel One stations are published in *Radio and Records*, which is an influential newspaper in the radio business. (Tr. 1660-61) In addition to the value of having a song played on a major market radio station, a record company would benefit substantially from the fact that a Parallel One station was carrying the song since that fact could be used to promote the song to other stations as worthy of play. (Tr. 1659-60)

338. Amadeo explained that record company representatives were often under strong pressure from their superiors to get records by new artists on WHYI's playlist. This pressure was removed if they got on the WHYI playlist. As noted, *supra*, WHYI was a Parallel One station with a "very strong reputation with other radio stations around the country." As a result, many stations viewed WHYI as a "gauge" for their own programming. (Tr. 1210-12) Independent record promoters were paid in part on the basis of records that they were promoting being added to the WHYI playlist. (Tr. 1204) Ross understood that some independent record promoters were paid based on the number of records they succeeded in having added to the playlist. (Tr. 729)

E. *Receipt by WHYI of Promotional or " Good Will" Items Distributed By Record Companies*

339. As detailed, *supra*, WHYI, as a popular music radio station, has had a continuing relationship with the various record companies that produce and/or distribute the recordings of the artists who perform the music played by WHYI. (Metroplex Ex. 1, ¶ 142) This relationship was with the record companies' representatives. (Metroplex Ex. 3, ¶ 12) It was the practice of record company representatives operating in the Florida radio markets to distribute promotional or good will items to the radio stations or station employees with whom they had these relationships. (Metroplex Ex. 3, ¶ 13; Metroplex Ex. 2, ¶ 15; Tr. 931) Frank Amadeo, who worked from September 1984 to May 1985 as a record company representative for Elektra Records serving 35 radio stations in 13 markets throughout Florida, related that all record company representatives whom he knew, at that time, distributed such items, and all the radio stations with which he worked accepted such items both from him and from other record company representatives. (Metroplex Ex. 3, ¶¶ 3 and 13.

340. These promotional or good will items, many of which advertised the name of a record artist, a record, or a record company, consisted of such items as plastic frisbees, beer can holders, windbreaker jackets, T-shirts, caps, coffee mugs, headbands, sun visors, paperweights, canvas tote bags, buttons, novelties, local concert tickets, and miscellaneous items. (Metroplex Ex. 1, ¶ 144 and atts. 53-72; Metroplex Ex. 3, ¶ 13) Other promotional or good will items received by WHYI employees were: a commemorative trinket distributed by Motown records marking Motown's 25th anniversary; a bottle of wine or champagne when WHYI achieved good ratings; and a fruit basket. (Metroplex Ex. 1, ¶ 145; Metroplex Ex. 3, ¶ 13) The Motown 25th anniversary pendant was given to radio station Program Directors throughout the country. (Tr. 797-98)

341. Ross estimated the value of most of these items at less than $10. However, he estimated the value of concert tickets at $20, windbreakers at $50, and the Motown commemorative trinket, which was a gold or silver pendant to be worn on a necklace, at $75. (Metroplex Ex. 1, pp. 81-83; Tr. 798)

342. The extent to which WHYI employees received items of this nature or other items is not established on the record since there was no station policy necessarily requiring disclosure of the receipt of such items.

343. Amadeo, recounting his experience as a record company representative in Florida, opined that the distribution of promotional and good will items constituted a public relations practice by which record company representatives attempted to draw attention to their product and to promote good working relationships with the people with whom they worked. (Metroplex Ex. 3, ¶ 14) In Ross' view, this was the same kind of promotional activity that WHYI itself undertook when it distributed similar promotional or good will items to its advertising agencies and clients. Ross understood the distribution of such items by record company representatives to have been a routine, common, and ordinary promotional practice in the industry. Ross considered this practice as acceptable: it would not induce anyone to play a record. (Metroplex Ex. 1, ¶¶ 142-46) Wain understood that it was a common industry practice, widely regarded as routine public relations, conferring no benefit or special or significant value upon the recipients. (Metroplex Ex. 2, ¶ 15)

344. Amadeo recounted that among the promotional or good will items that record company representatives provided to radio stations in Florida were complimentary tickets to local concert events at which an artist of the record company was appearing. (Metroplex Ex. 3, ¶ 15) A normal concert ticket had a face value of approximately $20. A station might receive anywhere from two to ten such complimentary tickets to a concert. Usually such tickets were used by WHYI employees to attend the concert. However, depending on the concert and how many

tickets were received, WHYI occasionally gave away some of these tickets over the air to listeners as prizes. Sometimes the station had no use for such tickets and discarded them. (Metroplex Ex. 3, ¶ 15)

345. Amadeo explained that when a radio station gave concert tickets away to listeners over the air, publicity was generated for the concert at which the artist was appearing. This publicity arose simply from the disc jockeys' mention of the concert when the tickets were given away. WHYI did not specially "plug" the concert. According to Amadeo, even if a record company itself had no financial stake in the concert, it benefited indirectly from the public exposure of its artist at the concert. (Metroplex Ex. 3, ¶ 16) Amadeo attended about half of the local concerts for which he received complimentary tickets. He maintained that attendance at concerts by radio station Program Directors or Music Directors served the business purpose of enabling these programmers to see and hear performances of artists whose music they were regularly required in their jobs to evaluate. It also enabled them, in Amadeo's opinion, to assess public reaction and response to the artists, as demonstrated by the concert audiences. Amadeo felt that attendance at concerts helped radio station programmers to know their music and to know their market, both of which were essential to performing their jobs well. That is why Amadeo attended many of the concerts for which he received complimentary tickets. (Metroplex Ex. 3, ¶ 17)

346. As noted, *supra*, Amadeo received Christmas and birthday gifts from two personal friends of his who were record company representatives. These gifts had been in the nature of a shirt or bottle of cologne. (Tr. 1131) He had given Christmas and birthday gifts to them. He explained that they exchanged such gifts for several years, including when he was not employed at WHYI. (Metroplex Ex. 3, ¶ 19; Tr. 1131-32)

347. Amadeo knew of no instance where any other WHYI employee ever caused a record to be played on the station in return for something received from a record company or its representative. (Metroplex Ex. 3, ¶ 20) Both Amadeo and Walker averred that they never caused a record to be played on WHYI in return for receiving something from a record company or its representative. (Metroplex Ex. 3, ¶ 37; Tr. 4501) Ross and Wain also knew of no instance in which it ever happened at the station. (Metroplex Ex. 1, ¶ 171; Metroplex Ex. 2, ¶ 15)

348. Walker and Amadeo both did not consider the various promotional or public relations items they received to be anything of substance. (Tr. 1689-91; Metroplex Ex. 3, ¶ 81)

349. As a gesture of business good will, WHYI each year during the Christmas season spent about $2,000 to host a formal party for all the local and national record company representatives with whom the station worked, and one year at Christmas the station gave each of them a bottle of wine. (Metroplex Ex. 1, ¶ 145; Metroplex Ex. 3, ¶ 14)

350. Metroplex's "payola" policy did not prohibit the station or its employees from accepting promotional or good will items. Both Ross and Wain expressed the belief that such items had no significant value, and did not constitute a potential to induce WHYI's music selection personnel to play records on the air. (Metroplex Ex. 1, ¶ 146; Metroplex Ex. 2, ¶ 15) Wain has always understood the purpose of such promotional activity to be simply to keep the promoter's product on people's minds; he has never considered legitimate sales promotion of this kind to be improper. (Metroplex Ex. 2, ¶ 15) They both understand that the distribution of promotional and good will items was a routine and universal practice in the industry, and neither has ever heard any broadcaster suggest that the acceptance of such items amounted to "payola" or violated FCC sponsorship identification rules. For this reason, neither has ever thought that the practice involved any regulatory violation. (Metroplex Ex. 1, ¶¶ 146-47; Metroplex Ex. 2, ¶ 15)

F. WHYI's Request For Promotional Records and / or Cassette Tapes

351. As more fully detailed, *infra*, there are two circumstances in which WHYI received from record companies free promotional copies of record albums or cassette tapes: (1) WHYI automatically requested and received 50 promotional copies of each record it had added to its playlist; and (2) in connection with special WHYI giveaway promotions, the station received, on request, from 25 to 150 promotional copies of a popular artist's album. (Metroplex Ex. 1, ¶¶ 148-50; Metroplex Ex. 3, ¶¶ 21-22)

352. It was, and continues to be, WHYI's practice to request record companies to provide promotional copies of the record albums or cassette tapes containing the songs that WHYI had added to its playlist. A song was "added" on the week that it first went onto the station's playlist. While the number varied from week to week, WHYI averaged about three "adds" to its playlist per week. (Metroplex Ex. 1, ¶ 148; Tr. 1161)

353. The procedure for requesting these promotional copies was as follows. After WHYI had added a song to its playlist, a written request form was sent to the record company or its representative over Amadeo's signature requesting that WHYI be sent 50 copies of the album or cassette in question for use by the station as promotional giveaways. WHYI automatically submitted such requests for every song that it had added to its playlist. In response to these requests, record companies routinely furnished WHYI the requested number of promotional copies without charge. (Metroplex Ex. 1, ¶ 149 and att. 73; Metroplex Ex. 3, ¶ 21)

354. Most of the promotional copies received by WHYI through this procedure were used by the station for giveaway to station listeners on the air, to persons attending station promotional events, or to local charitable organizations for use in fundraisers. Some spare copies were used by WHYI employees for their personal collection. The copies retained by the station were for archival purposes. (Metroplex Ex. 1, ¶ 151) The station identified the artist and title of the record/cassette in on-air giveaways, although there was no "plug" or "sales pitch." (Metroplex Ex. 1, ¶ 151) The name of the record company would also occasionally be announced, when requested by the record company. (Tr. 808) The announcement of the artist and album title was the value sought by the record company. (Tr. 807)

355. Ross maintained that WHYI's decision to add a record to its playlist was not based, in any way, on the fact that the record company would later provide these 50 promotional copies to the station. Ross asserted that if a record company chose not to supply the promotional copies, WHYI would continue to play the record anyway based on its normal music selection criteria. In this con-

nection, Ross noted that often the record had been airing on WHYI for many weeks by the time the extra promotional copies were received. (Metroplex Ex. 1, ¶ 149)

356. On certain occasions, about 10 or 12 times a year, WHYI conducted special weekend giveaway promotions, such as a "Michael Jackson Weekend" promotion, in which it gave away to listeners over the air an album or cassette of a major star artist with a current hit on the charts. This was done where the artist already had a record on WHYI's playlist. The station never held such a promotion when the artist did not have a record on its playlist at the time. The record was played in its normal rotation. WHYI did not change the rotation during the album giveaway promotion and, according to Ross, there was no relationship between the giveaway and the rotation. (Metroplex Ex. 1, ¶ 150; Metroplex Ex. 3, ¶ 22; Tr. 849-53, 1143)

357. For these special promotions, WHYI usually received the promotional copies free of charge from the record companies. The quantity varied from 25 to 150, depending on the nature of the promotion and the number requested by WHYI. In cases where the record company was unwilling to furnish free promotional copies, WHYI bought its own copies for use in the promotion. The station never cancelled a prospective promotion because the record company failed to provide free copies. (Metroplex Ex. 1, ¶ 150; Metroplex Ex. 3, ¶ 22; Tr. 658-60, 806, 849, 1042) In some cases, record companies took the initiative in approaching WHYI and proposed that the station do a promotional giveaway of a particular artist's album to be supplied by the record company. In such cases, WHYI did the promotion only if it considered it good programming. The station sometimes rejected such proposals because they lacked programming merit. (Tr. 280-83) Ross believed that it was "okay" to request and accept records provided for these special promotional purposes and to give them away during broadcasts, to charities or whatever. (Tr. 803)

358. During the period September 1984 through May 1985, when Amadeo was a record company representative for Elektra Records, requests for free promotional giveaway copies of records were routinely made to him by every radio station for which he was responsible in his region of Florida. According to Amadeo, stations requested promotional copies of every record they had added to their playlist. The number of copies requested and provided generally depended on the size of the station's market. In a large market, the number was typically 50. In a small market, the number was typically 25 or fewer. Amadeo, when a Florida record representative, handled such requests for special station giveaway promotions from many radio stations. (Metroplex Ex. 3, ¶ 23; Tr. 1090)

359. Amadeo, based on his experience as a record company representative, expressed the belief that companies provide free promotional copies of albums or cassettes to radio stations for giveaways because giveaways over the air generate valuable publicity for the record and artist in question. He noted that the publicity comes from the mention on the air of the name of the artist and the title of the record being given away. (Metroplex Ex. 3, ¶ 24) Ross characterized this practice as very inexpensive advertising for the record company. (Tr. 282)

360. It was Ross' understanding that such distribution by record companies of free promotional albums to radio stations for giveaway over the air was a generally acceptable practice in the industry. (Tr. 284-85)

361. As noted in paragraph 354, *supra*, when giving away the promotional copies on the air, WHYI's disc jockeys identified the name of the artist and the title of the album or cassette. The disc jockeys did not make a "plug" or "sales pitch" for the album or cassette. (Metroplex Ex. 1, ¶ 151) The announcement was in the nature of, "You just won a Michael Jackson album." WHYI made the same kind of announcement whether the album was supplied free by the record company or was purchased by WHYI. (Tr. 807) If a record company providing free promotional copies requested that its name also be referred to in the announcement, as occasionally happened, WHYI always honored that request. (Tr. 807-08) It was Ross' understanding that all other major and minor CHR stations in the country follow the same practice with respect to broadcast announcements when giving away promotional copies of albums or cassettes on the air. He had never been advised that it violated the rules or was otherwise improper. (Tr. 289-90)

362. Amadeo, who served on the Music Committee, knew of no instance where WHYI added a record to its playlist in return for receiving promotional giveaway copies. (Metroplex Ex. 3, ¶ 25) Ross knew of no agreement or understanding with record companies that WHYI would broadcast any program matter (other than the mention referred to above) as consideration for receiving promotional copies. (Metroplex Ex. 1, ¶ 151; Tr. 283-84)

G. *Theft of Promotional Records*

363. Over a period of three to four months in 1986, Amadeo, without authorization, took approximately 250 to 300 promotional albums that WHYI had received free from record companies. He sold them for $1 to $2 apiece to a Massachusetts retail record store owner who had approached him for that purpose. (Tr. 1105-11) He received a total of $500 to $750. Nobody at WHYI knew about it at the time. (Tr. 1113) WHYI's management first learned of it through an internal investigation in mid-1987 during the discovery phase of this proceeding. (Tr. 666-69) Amadeo acknowledged what he had done after intense questioning. (Tr. 836) After learning of the matter, Ross, who had never heard of a retailer buying promotional albums for sale to the public, issued a written sanction to Amadeo: a 90-day probation during which Amadeo was subject to immediate termination for any further wrongdoing. (Tr. 835, 838, 1313-14) That sanction is part of Amadeo's personnel file. (Tr. 1314)

364. As a safeguard against unauthorized resale of promotional copies of albums or cassettes, record companies physically mark the albums or cassettes to identify them as promotional copies. An album is marked by slicing a corner of the album cover with a band saw; a cassette is marked by drilling a hole into the plastic container in which the cassette rests. In addition, a gold or silver stamp is embossed into the album cover or the shrink wrap of the cassette cover. These markings are recognizable to those who are knowledgable in the industry and identify the albums or cassettes as promotional copies. (Tr. 450-51, 612-14)

H. *WHYI Promotional Concerts*

365. WHYI periodically presented live music concerts featuring performances by recording artists or groups. (Metroplex Ex. 1, ¶ 153) The principal such concert was the annual WHYI Birthday Party concert held each summer in August at a location in the Ft. Lauderdale-Miami area. (Metroplex Ex. 1, ¶ 163; Metroplex Ex. 4, ¶ 3) The following artists appeared at the 1985 Birthday Party: Natalie Cole, Jermaine Stewart, Menudo, Kim Carnes, Shannon, Howard Hewett, Tom Boys and Bruce Johnston (as emcee). The following artists appeared at the 1986 Birthday Party concert: Miami Sound Machine, Jermaine Stewart, El Debarge, Expose, Nice & Wild and Sheena Easton (as emcee). (Metroplex Ex. 1, p. 94) This annual Birthday Party concert was presented free of charge to the public. (Metroplex Ex. 1, ¶ 163; Metroplex Ex. 4, ¶ 3) According to Ross, WHYI presented such concerts for two basic reasons. First, these concerts were a way to serve the community by giving the public an opportunity to see popular artists perform and by creating residual economic benefits to the community. Second, the concerts helped build and maintain WHYI's popularity with listeners. Ross explained that these concerts gave WHYI credibility as a market leader, which translated into increased listenership for WHYI. (Metroplex Ex. 1, ¶ 153)

366. WHYI received no admission proceeds from its promotional concerts. The station's practice was to engage artists for the concerts who would not charge WHYI a talent fee for their appearance. (Metroplex Ex. 1, ¶ 154; Metroplex Ex. 4, ¶ 5) It was Ross' view that the waiver of a talent fee by the artists was reasonable because the artist's appearance was quite different from a normal concert, which ordinarily required an enormous amount of time and effort on the part of the artist, including special rehearsals, costumes, and lighting. The artist's appearance at a WHYI concert was usually limited to performing two or three songs rather than a full concert presentation, and often the artist merely sang to "track" (*i.e.*, recorded back-up music) rather than to live accompaniment. (Metroplex Ex. 1, ¶ 154)

367. In about 90% of the cases, WHYI paid the artists' expenses, such as transportation and lodging, as well as fees for back-up musicians, if any, who supported an artist. (Metroplex Ex. 1, ¶ 154; Metroplex Ex. 4, ¶ 5; Tr. 1043, 1101) Some artists paid their own expenses because they were already in the area for some other reason or because they had their own expense budget for promotional concert appearances. (Metroplex Ex. 1, ¶ 154; Metroplex Ex. 4, ¶ 5; Tr. 1043, 1101-02)

368. Ross emphasized that an appearance at a WHYI concert generated publicity for an artist in the Ft. Lauderdale-Miami-Palm Beach market. He explained that such publicity came from the announcement of the event, the ongoing advance promotion of the event, and coverage of the event when it took place. On occasions there are newspaper stories and promotional advertisements, radio announcements, and in some cases, television news coverage of the event. The concert itself attracted large numbers of people, giving the artists live exposure to the public. Until the Birthday Party concert was moved to a smaller venue in 1986, it often drew more than 50,000 people. (Metroplex Ex. 1, ¶¶ 155, 163, and att. 74; Tr. 300-01)

369. Amadeo and Tony Novia, Promotions Director, had the principal responsibility for arranging the appearances of the artists at the WHYI promotional concerts. (Metroplex Ex. 3, ¶ 33; Metroplex Ex. 4, ¶ 4; Tr. 1028-30, 1753) To obtain artists for the annual Birthday Party concert, WHYI contacted all of the approximately 15 major record companies to inquire about the availability of their artists to appear at the concert. (Metroplex Ex. 65; Tr. 1039, 1307-10, 1754-57) Artists for the Birthday Concerts were obtained by sending letters to all record companies or their representatives soliciting them to provide acts. The letters asked the record companies to waive talent fees while indicating that WHYI would pay out-of-pocket expenses. (Tr. 1039, 1207, 1307; Metroplex Ex. 65) At the outset of discussions with artists or their managers, Amadeo informed them that WHYI did not pay talent fees to artists for appearing at its concerts. (Metroplex Ex. 3, ¶ 33; Metroplex Ex. 65, p. 2) Some artists whom WHYI invited declined to appear without a talent fee. (Metroplex Ex. 4, ¶ 6) Most, however, were willing to appear without a talent fee. (Metroplex Ex. 3, ¶ 33; Metroplex Ex. 4, ¶ 6)

370. Based on discussions and negotiations with many artists and their managers, it was the understanding of Amadeo and Novia that the reason artists agreed to appear at WHYI concerts without a talent fee was because they wanted the publicity and exposure that WHYI's concerts gave them, with the attendant opportunity to increase their record sales. (Metroplex Ex. 3, ¶¶ 34, 36; Metroplex Ex. 4, ¶ 6) Some artists asked WHYI if they could appear at the Birthday Party concert even though WHYI had not made the request. (Metroplex Ex. 1, ¶ 154; Metroplex Ex. 3, ¶ 35; Metroplex Ex. 4, ¶ 6) Another consideration expressed by artists in some instances was the additional exposure received at ancillary local promotions, such as autograph signings, arranged by WHYI as part of the agreement. (Metroplex Ex. 4, ¶ 7)

371. No claim is made by Ross or Amadeo that they believed that the practice of having record artists waive their talent fee for appearances at promotional concerts was common or widespread in the broadcast industry.

372. Ross acknowledged that one of WHYI's music selection criteria was the forthcoming appearance of an artist at a WHYI concert. Although WHYI received no gate receipts from its concerts, the station had a strong interest in promoting the success of its concerts by playing records of artists who would be appearing at the concerts. This, according to WHYI, increased public awareness of and enthusiasm for the concerts, and enhanced the concert audiences' enjoyment of the concerts by increasing listeners' familiarity with the artists' songs. In some cases, the artists appearing at a concert had current hit records that WHYI was playing. When that was the case, the airplay given to such records constituted the airplay from their normal rotation. (Tr. 970-71) Several of the artists appearing at the concerts had no current hit record at the time. In such cases, the station played "oldies" or "recurrents" of the artist (*i.e.*, distant or recent past hit records). (Metroplex Ex. 1, ¶ 162, atts. 79-82, 88; Metroplex Ex. 3, ¶ 32; Tr. 970-71) "Oldies" and "recurrents" were not listed on the station's weekly playlist; the playlist included only the current releases being played on the station. Such oldies and recurrents were not promoted by record companies, either for radio airplay or for record store sales. (Metroplex Ex. 3, ¶ 32; Joint Ex. 2, ¶ 3)

373. Amadeo related that in his discussions and negotiations with artists and their managers for WHYI concert appearances, there had never been any agreement, or suggestion, that WHYI was obliged to play the artist's

records in return for the artist's waiving a talent fee. (Metroplex Ex. 3, ¶ 36) Novia, who was also involved in negotiations with artists, maintained that there was never any discussion of airplay to be given on WHYI for the artist's records; no manager had ever conditioned an artist's appearance at a concert on WHYI's playing the artist's record, or indicated that the artist would appear without a fee because they knew or understood that WHYI would play the artist's record. (Metroplex Ex. 4, ¶ 8; Tr. 1029) In no case, Novia asserted, had there been any agreement or understanding on WHYI's part that WHYI would play the artist's records in return for the artist's agreeing to appear at the concert without a talent fee. (Metroplex Ex. 4, ¶ 6)

374. Novia was not a member of WHYI's Music Committee and had played no role in decisions concerning record rotation or additions to the station's playlist. (Metroplex Ex. 4, ¶ 9) Walker, who as Program Director chaired the Music Committee, did not participate in making arrangements with artists for WHYI concert appearances. (Tr. 1748-49, 1753) Only Amadeo, as Music Director, participated both in negotiating with artists and in the music selection decision-making process. During his tenure as Music Director, he participated in virtually all of the Music Committee's discussions and decisions about music selection. (Metroplex Ex. 3, ¶ 37) However, Amadeo claimed that when WHYI played the record of an artist appearing at a WHYI concert, the fact that the artist was appearing without a talent fee was "absolutely not a consideration" in playing the record. (Metroplex Ex. 3, ¶ 36) He stressed that, to his knowledge, in no case was airplay given to a record because WHYI had some agreement or understanding with the artist that airplay would be given in return for the artist's appearance at a WHYI concert. (Metroplex Ex. 3, ¶ 37)

375. A comparison of WHYI's playlists with national data in *Radio & Records* as to records of the artists who appeared at WHYI's 1985 and 1986 Birthday Party concerts, does not disclose that those artists received disproportionate airplay of their records during the period immediately before and after these concerts. (Metroplex Ex. 1, ¶ 163 and atts. 75-88) In all cases, where WHYI played current records of those artists around the time of the concert, those records (1) were ranked on national Top 30 or Top 40 charts (atts. 75, 76, 83, 84, 85), (2) were receiving play on a significant number of other reporting stations, even though not ranked on a national Top 30 or Top 40 chart (atts. 77, 86), and/or (3) achieved the level of popular appeal in WHYI's market that was reflected in its numerical ranking on WHYI's Top 30 or Top 40 playlist. (atts. 76, 77, 78, 83, 84, 85, 87) It is recognized that these analyses included only the record of the artists who appeared at the concerts and not all records of the record company which arranged for the appearance at the concerts.

I. ***The 1986 Grammy Awards***

376. One of the record companies with which WHYI had regular contact in the course of its business was Scotti Brothers, a diversified entertainment company which produces films and television programs, manages recording artists, produces records on its own label, and has served as an independent record promoter for other record companies, promoting their records for airplay on radio stations. (Metroplex Ex. 1, ¶ 166; Tr. 725, 731, 1198, 1248, 1615-16) For a period of time in 1985 and 1986, Scotti Brothers, in addition to promoting records on its own label, was promoting non-Scotti records to WHYI as an independent promoter. (Tr. 1199-1200)

377. Scotti Brothers' record representative for WHYI's region was Rita Fuki (Fuki). (Metroplex Ex. 1, ¶ 26; Tr. 1248) Fuki promoted Scotti Brothers label records to WHYI and, in that connection, Amadeo normally spoke to her on the telephone once or twice a week. (Tr. 1248-50a) Around late January 1986, in the course of one of their conversations, Fuki asked Amadeo whether he and Walker, then WHYI's Program Director, would be interested in attending the Grammy Awards ceremony in Los Angeles. (Metroplex Ex. 3, ¶ 26; Tr. 1249) The Grammy Awards are an annual music industry ceremony sponsored by the National Academy of Recording Arts & Sciences (NARAS), a nonprofit organization whose membership includes record company executives and recording artists. The awards recognize various categories of outstanding achievement by artists, songwriters, and others in the industry. (Metroplex Ex. 1, ¶ 164; Metroplex Ex. 89; Tr. 1237)

378. Amadeo recounted the following scenario concerning this incident: after talking to Walker and Ross about it, Amadeo told Fuki that they would be interested; she told him that the admission tickets to the ceremony would be provided by Scotti Brothers, but that Walker and Amadeo would be responsible for their travel and hotel expenses; Fuki offered to have Amadeo and Walker's airline and hotel bookings made by Scotti Brothers' regular travel agency in Los Angeles because, she said, the travel agency was able to get good discounts on such arrangements; the airline tickets were to be mailed to Amadeo and Walker and Scotti Brothers was to invoice Amadeo and Walker for the tickets after it received its bill from the travel agency. (Metroplex Ex. 3, ¶ 26)

379. Walker and Amadeo informed Ross that they were planning to go to the Grammy Awards at Scotti Brothers' invitation. Ross approved, stressing that they would have to pay their own expenses for the trip because it was against station policy for employees to take trips at record company expense. (Metroplex Ex. 1, ¶ 166; Metroplex Ex. 3, ¶ 27; Tr. 755, 1128, 1760) Both Walker and Amadeo assured Ross that they understood they would have to pay their own expenses and promised they would do so. (Metroplex Ex. 1, ¶ 166; Metroplex Ex. 3, ¶ 27) Pursuant to Ross' directive, their time in Los Angeles was also charged as annual vacation time. (Metroplex Ex. 1, ¶ 166, atts. 89 and 90; Metroplex Ex. 3, ¶ 27) Ross did not know nor did he inquire of Amadeo or Walker as to the cost of the tickets. (Tr. 750-52)

380. Walker and Amadeo each received two admission tickets to the Grammy Awards ceremony, which was held on February 25, 1986. Each took a guest. Amadeo's guest was Margaret Ann Ronayne, who was a record representative for Motown Records and a personal friend of Amadeo's. Walker's guest was Stacy Marks (Marks), an employee of a Miami television station. (Tr. 1243-45, 1611-12) The tickets covered admission to the awards ceremony and to a post-ceremony celebration, which Amadeo attended. (Metroplex Ex. 3, att. 5; Tr. 1241-42) Walker did not remember whether or not he attended the post-ceremony celebration. (Tr. 1610-11)

381. The Grammy tickets had no admission price shown on them. However, the record establishes that Scotti Brothers paid NARAS $350 apiece for the four tickets given to Walker and Amadeo. (Metroplex Ex. 89)

Amadeo "assumed" that a Grammy ticket was about the same as a concert ticket, about $20. (Metroplex Ex. 3, ¶ 30 and att. 51) He believed that they were promotional items comparable to the concert tickets that record company representatives distribute "all the time." (Tr. 1257) When he learned a few months before the hearing that Grammy Awards tickets cost between $150 and $500, he was astounded. (Metroplex Ex. 3, ¶ 30)

382. Walker had a similar understanding as to the cost of the tickets. His impression at the time of the invitation was that a Grammy Awards ticket was like a concert ticket, with an approximate value of $20 or $30. (Tr. 1627, 1733-34)

383. Both Ross and Wain maintained that they did not realize at the time that the Grammy Awards tickets had any significant value. Before the issue arose in this proceeding, Ross was unaware that there was any cost for such a ticket. It was his understanding that admission was by invitation only and was not open to the general public. (Metroplex Ex. 1, ¶ 168) Wain, with whom Ross discussed the Grammy Awards trip before Walker and Amadeo went to Los Angeles, did not inquire as to their value. (Tr. 755-56) He explained that he thought, at the time, that the tickets "were the kind of tickets that people ordinarily receive at industry and trade conventions or seminars." (Tr. 753-54) He was "under the impression that the tickets were free, that they were invitational tickets." (Tr. 991, 988-91, 997) When Wain learned the value of the tickets, he was of the view that their receipt was "highly improper" and constituted a "gift of substance." (Tr. 989)

384. Walker, Amadeo and their guests, went to Los Angeles on February 21 and returned on February 26, 1986. (Metroplex Ex. 3, ¶ 28) While there they attended the Grammy Awards ceremony on February 25. When they checked out of their hotel, the Westin Century Plaza, Walker paid their hotel bill with his credit card. (Metroplex Ex. 3, ¶ 28 and att. 2) The charge reflected on the credit card slip for the two rooms (Nos. 552 and 554) was $825.27, plus $1.00 miscellaneous, a total of $826.27. (Metroplex Ex. 3, att. 2, p. 1) The backup itemization furnished by the hotel at checkout likewise came to $825.27. However, unlike the credit card slip, the itemization purported to relate only to one of the rooms (No. 552). (*Id.* pp. 2-10) It was the understanding of both Amadeo and Walker that the $826.27 charge was the total for both rooms. (Tr. 1264, 1642) Walker explained that when they checked out, he asked the hotel desk for the final bill for the two rooms.[21] (Tr. 1642) Amadeo claimed that he reimbursed Walker in cash for his share sometime "fairly soon" after they returned from Los Angeles. (Metroplex Ex. 3, ¶ 28; Tr. 1268-69, 1647) Walker's recollection of the details was hazy. He recalled that Amadeo reimbursed him at least partially for something. (Tr. 1643-44, 1647-48)

385. On March 10, 1986, about two weeks after Walker and Amadeo returned from Los Angeles, Scotti Brothers sent Amadeo an invoice for the airplane tickets that Scotti Brothers had arranged for them. The total amount invoiced was $398, representing two $199 round trip tickets between Ft. Lauderdale and Los Angeles. (Metroplex Ex. 3, ¶ 29 and att. 3) Because this was a personal expense, the invoice went to Amadeo directly and did not go through WHYI's bookkeeping and accounting system. (Metroplex Ex. 3, ¶ 29)

386. Amadeo failed to pay the invoice when he received it. He claimed that he put the invoice with the hotel bill and then overlooked it when he filed them away at home after reimbursing Walker for his share of the hotel bill. (Tr. 1273-75) He did not receive a reminder notice or another follow-up bill from Scotti Brothers, and nobody at Scotti Brothers told him that the bill was unpaid. (Metroplex Ex. 3, ¶ 29; Tr. 1276-77) Walker never received an invoice from Scotti Brothers. (Tr. 1630-31) He thought Amadeo had mentioned to him that he had received the invoice. (Tr. 1631) He claimed that he had been under the impression that he had paid it. (Tr. 1631) However, in searching their records after the 1986 Grammy Awards incident became an issue in this proceeding, both Walker and Amadeo discovered that they had not paid the airfare invoice. (Metroplex Ex. 3, ¶ 29; Tr. 1273, 1631)

387. Ross made no effort to determine whether Walker and Amadeo had paid for their airline tickets until the question was raised in this proceeding. He explained that nothing had led him to believe that Walker and Amadeo had not fully paid the expenses of their 1986 Grammy Awards trip, as they had assured him they would. (Metroplex Ex. 1, ¶ 167; Tr. 776) When the question arose, Ross inquired of Amadeo as to this matter. He also contacted Tad Dowd of Scotti Brothers and asked him whether there was an invoice and, if so, whether it had been paid. Dowd told Ross that he would look into it and get back to him. In the meantime, Amadeo brought his records to Ross, informing him that he had given some cash to Walker and that he thought the airfare bill had not been paid but that he was not sure. Ross learned from Dowd that the invoice had not been paid. Ross asked Dowd how Scotti Brothers could have failed to follow up on the invoice, and Dowd explained that the company had been in the process of converting to a computer system at the time and that the matter had somehow fallen through the cracks. (Tr. 773-75, 777)

388. Ross instructed Amadeo to pay his share of the invoice. (Metroplex Ex. 1, ¶ 167; Tr. 773, 1271) Amadeo did so on June 9, 1987. (Metroplex Ex. 2, ¶ 29 and att. 4; Tr. 1283, 1792-93) Walker, who was no longer employed at WHYI, paid his share in June 1987. (Tr. 1630-31) Although Ross did not issue a written sanction to Amadeo for having failed to pay the airfare invoice, he gave him an oral reprimand. (Tr. 779, 784, 794-95)

389. The WHYI playlists for the period 1985 and 1986 reveal that 17 of approximately 300 records added to the station's playlist were Scotti Brothers records on the Scotti Brothers/CBS label. A comparison of the status of those records on WHYI's weekly playlists, with the airplay the records were receiving nationally, as reflected in the national weekly charts published in *Radio & Records*, fails to establish any apparent excessive or unwarranted play of the Scotti Brothers records over WHYI. (Metroplex Ex. 1, ¶¶ 169-170) This is also true for the period following receipt of the Grammy tickets by Amadeo and Walker. (Metroplex Ex. 1, att. 97, 100-105)

390. In one instance, in September 1985, WHYI added a Scotti Brothers record that received no reported airplay by other stations. WHYI dropped that record after two weeks of limited play. (Metroplex Ex. 1, att. 96) In every other case, the Scotti Brothers records played by WHYI in 1985 and 1986: (1) were ranked on national Top 30 or Top 40 charts. (Metroplex Ex. 1, atts. 91-93, 97-98, 100-01, 105-07), (2) received play on a significant number

of other reporting stations, even though not ranked on a national Top 30 or Top 40 chart (Metroplex Ex. 1, atts. 94-95, 99, 102-03), and/or (3) achieved sufficient popular appeal in WHYI's market to warrant being ranked in WHYI's Top 30 or Top 40. (Metroplex Ex. 1, atts. 91-94, 97- 98, 100-01, 103-06) No more favorable treatment was given to Scotti Brothers records added after late January 1986, when the Grammy Awards invitation was extended (Metroplex Ex. 1, atts. 102-08) than to Scotti Brothers records added before then. (Metroplex Ex. 1, atts. 91-107) Over the two-year period WHYI gave no airplay to seven Scotti Brothers records that were reported as receiving play on other stations (Metroplex Ex. 1, atts. 108-114), two of which received national chart rankings. (Metroplex Ex. 1, atts. 109-114).

J. *Paper Adds*

391. As noted, *supra*, the weekly playlists of WHYI and other radio stations were published in *Radio & Records*, a national music and broadcast industry trade publication. WHYI's playlist identified the records currently being played by the station, excluding "oldies, "recurrents," and test records. It ranked the Top 30 or Top 40 such records in numerical order based on their relative popularity in WHYI's market, listed additional records that were receiving limited airplay in a category designated "On", and also listed the records that WHYI had added to the playlist for the first time that week in a category designated "Adds." (Joint Ex. 2; Metroplex Ex. 75, pp. i-ii)

392. Wain, Ross, Weiss, and Walker understood a paper add to be a situation where a radio station submitted a playlist to the trade press listing a record that the station had not actually played. (Tr. 706-07, 1002, 1656-57, 1337) Amadeo, however, defined a paper add as the inclusion of the station's published playlist of a record that the station, although giving it some experimental airplay during overnight hours, was not playing in a regular or normal rotation throughout the day.[22] (Tr. 1146, 1151, 1156-57)

393. Amadeo, as Music Director, was responsible for compiling WHYI's playlist after the weekly Music Committee meeting and reporting it to *Radio & Records*. (Tr. 1682) He stressed that in no instance did he ever include on the playlist a record that was not being played on the station. (Tr. 1177) However, he acknowledged that on some occasions, between January 1983 and June 1984, WHYI's playlist listed records that were not then being played in a regular rotation. (Tr. 1285-98) The records were "test records, *i.e.*, new and unfamiliar records that WHYI played on a limited experimental basis during the overnight period (10:00 p.m. to 5:00 a.m.) to determine through audience reaction whether the record was likely to become popular. (Tr. 1148-50, 1157) Usually test records were records by new artists. (Tr. 1163, 1287) A record was played on a test basis only if the Music Committee felt that, although it was new and unestablished, it had programming merit under the station's criteria and the potential to become a hit. (Tr. 1157-60, 1296) The only criterion that was not involved with regard to a test record was the call-out research, since a record could not be tested on call-out until it had some exposure. (Tr. 1296) Typically a test record was played once a night for three to four weeks. (Tr. 1160, 1167) Listener reaction was assessed through the station's request-line calls and local retail sales. (Tr. 1160) Based on the strength of listener response, the record was either dropped or upgraded into a regular rotation. (Tr. 1162) Under normal procedure, a test record was not listed on WHYI's playlist while it was in test status. (Tr. 1294-95) However, if it was subsequently upgraded to a regular rotation, it was added to the playlist at that time. (Tr. 1162, 1294-95)

394. Amadeo disclosed that, contrary to the normal procedure, the WHYI playlist submitted to *Radio & Records* occasionally included a record that was only in test status at the time and was not being played in a regular daytime rotation. In these cases, the record was classified on the playlist as an "add." (Tr. 1158) Amadeo referred to these as paper adds. (Tr. 1290-91) This occurred between January 1983 and June 1984. (Tr. 1202, 1291) During that period WHYI tested approximately 180 records. (Tr. 1291) Of that number, Amadeo's best estimate was that about 10 were reported on the playlist as "adds" while they were in test status, although he conceded it could have been as many as 15. (Tr. 1190, 1292) Amadeo explained that the decision to do this as a favor to the record company representatives, who were under pressure from their superiors to get the records added to stations' playlists, was made by Walker and himself. (Tr. 1175, 1179-80, 1193-94, 1210-11, 1217-18, 1220) According to Amadeo, the favor was listing the record on the playlist as an add and not in playing the record as a test record. The decision to play the record as a test record, Amadeo explained, was based solely on the Music Committee's judgment that the record had programming value and merited testing, and that decision was reviewed with the station's independent programming consultant before the record was put on the air in a test rotation. (Tr. 1210, 1292-93, 1297) Amadeo, who emphasized that WHYI never put a record on the air due to pressure, explained that the favor, the response to the pressure from the record representative, was in agreeing to report the record to *Radio & Records* as an "add" to the playlist while it was only in test status. (Tr. 1180-81, 1175, 1210, 1218, 1292-94) Amadeo further explained that, although the record would have been put on the air as a test record whether or not there was pressure from the record company representative, it would not have been listed as an add to the playlist at that point absent such pressure. (Tr. 1297)

395. Amadeo explained his motivation by saying, "it's human nature to want to help people you work with." (Tr. 1195) According to him, there was no pattern by which a particular record company representative was helped by paper adds; it was done on an individual basis, and Amadeo believed that all the record representatives were helped, at one time or another. (Tr. 1209) According to Amadeo, both Scotti Brothers and Motown Record benefited from the practice. (Tr. 1204-06) Although he recognized that it was a bad business practice and that it was misleading because it misrepresented the station's rotation, he believed that it did not hurt anybody. He did not understand it to be illegal or an FCC violation. (Tr. 1172-73, 1218) He maintained that he never had an agreement or understanding with any record company representative that he would get something in return for adding a test record to the playlist. (Tr. 1318) The practice stopped at WHYI after Amadeo attended a broadcast music industry convention in June 1984 at which paper adds were a major subject of discussion and came under criticism by industry members. (Tr. 1176-78, 1203, 1212, 1291)

396. After returning from the convention, and reading some additional articles, Amadeo discussed his observations with Walker and they decided that the practice of "paper adds" should cease. (Tr. 1178, 1203, 1212) Prior to the time he left the station in August 1984, the practice had ceased. (Tr. 1178) Amadeo did not believe that "paper adds" were illegal or against FCC rulings or were covered by the payola affidavit. He believed them to be just a bad business practice. (Tr. 1173, 1175, 1220)

397. Walker's testimony was somewhat contradictory. He defined a "paper add" as "a situation where a radio station reported to the various trade publications that a record had been added to the playlist when, in fact, it was not being played on the air." (Tr. 1656-57) Based on his definition, he stated that no "paper adds" occurred while he was at the station. (Tr. 1657) In his view, if a record was played even once or twice and reported on *Radio & Records*, it would not be "paper add." (Tr. 1663) Walker was not involved in the preparation of the playlist and he did not review it. (Tr. 1681-83)

398. Amadeo did not believe Ross was aware of the practice of paper adds. (Tr. 1196-97) In a discussion in August 1984, shortly before Amadeo left WHYI to work for Elektra Records, Ross asked Amadeo if there had been anything unusual recently concerning adds to the station's playlist, to which Amadeo responded that he thought there had been a paper add. (Metroplex Ex. 1, att. 50; Tr. 717-19, 1225-31) Ross claimed that he then queried the station's independent programming consultant, Dwight Douglas, who assured him that he had reviewed the playlists and was confident there had not been any paper adds. (Metroplex Ex. 1, att. 50; Tr. 719-20, 799, 801) Ross also questioned Walker, who assured him that there had been no paper adds. (Tr. 719, 801, 1765-66)

399. Wain related that he had a "frank discussion" with Ross that it was not in their interest to have paper adds and Ross agreed with him, assuring him that he would make sure that it did not occur. (Tr. 1006)

400. When the subject of paper adds came up in the trade press, Wain sent a memorandum to Metroplex managers on April 8, 1985, that stated in part (Southeast Ex. 11, p. 1):

> Frankly, a paper ad [sic] is a fraud. It is a representation to our public and the people who we deal with, *i.e.* suppliers, distributors, record producers, artists, record companies, etc., that we are either playing a record or considering playing a record. That is not the purpose of a published playlist. The purpose of a published playlist is simply to represent to our various publics that these are the records we are actually playing.
>
> Therefore, I want you to make certain that no radio station in the Metroplex Group is ever guilty of "paper ads." If a record appears on our playlist, it should represent the fact that the record is being played.

K. ***Drug Use By WHYI Employees***

401. The record evidence with respect to the use of drugs by WHYI employees and whether such drugs were, on occasion, furnished to employees by record company representatives rests upon the testimony of Robert Walker, WHYI Program Director, from January 1983 to July 1986. During his initial appearance as a witness, Walker invoked his privilege against self-incrimination as to whether he participated in drug use with record company representatives and whether he received drugs from such representatives. The Presiding Judge, by *Order* (FCC 87M-3318), released December 22, 1987, granted the "Immunity Request" filed December 12, 1987, of Southeast and ruled that Walker should be given limited immunity to testify concerning the receipt by him of drugs from record company representatives. The Presiding Judge's *Order* and the Immunity Request were forwarded to the General Counsel, who forwarded the matter to the U.S. Attorney General. William F. Weld, then Assistant Attorney General, Criminal Division of the U.S. Department of Justice, by letter dated January 28, 1988, approved the immunity request. (Tr. 4404-06) As a result, Walker appeared and testified on March 2, 1988, under a grant of immunity from prosecution. The Presiding Judge carefully observed Walker during his testimony on that date, and concludes that while he was truthful, he was vague and evasive and equivocal in his responses to questions. The Presiding Judge realizes that it was difficult for Walker to reveal in a public forum what had been a debilitating drug problem and even more difficult to identify those individuals with whom he engaged in this perfidious and life-destroying habit. However, the Presiding Judge left the courtroom at the conclusion of Walker's testimony with the strong feeling that the entire story with respect to this sad incident had not been told.

402. One other matter merits discussion. Both Walker and counsel made continued reference to "recreational drug use" in describing the use of cocaine and marijuana, both during the hearing and in their proposed findings. The accepted definition of recreation is any form of play, amusement or relaxation used for the purpose of refreshment of mind or body. The Presiding Judge rejects the concept that the use of cocaine or marijuana, both debilitating drugs, refreshes the mind or body. For this reason, reference will be made to "drug use."

403. Walker, who was WHYI Program Director from 1983 to June 1986, acknowledged that from the late 1970's until 1986 he had a debilitating alcohol and drug problem. (Tr. 4412-13) He testified that he no longer uses drugs and regrets ever having done so. He explained the use of drugs was part of his lifestyle at the time and was accepted among the people he knew in the media and entertainment business, who also used drugs. (Tr. 4412-13, 4425, 4431, 4442, 4483-84) The circle of friends with whom he socialized included media, record company personnel and other people, almost all of whom used drugs. (Tr. 4414, 4442) He characterized drug use as "pervasive" in the radio business in the Miami-Ft. Lauderdale area. (Tr. 4435)

404. Walker estimated that on perhaps 20-50 occasions "out of hundreds," record company representative were among the persons present at social functions he attended where drug use took place and where he participated in drug use. (Tr. 4409-11, 4432) These functions typically were parties, concert outings, or club gatherings. (Tr. 4431-32) Walker stressed that these were not organized drug parties, but just social gatherings of people who knew one another. (Tr. 4422)

405. Walker claimed that he usually brought drugs to such functions. (Tr. 4438) In those settings, whoever had drugs shared them with those present. (Tr. 4487) Consequently, he made his drugs available to others and they shared their drugs with him. (Tr. 4486-87, 4495-96) Walk-

er described the party scene as follows: "There might be three or four people passing something around. There might be six people passing something." (Tr. 4483) In some cases record company representatives were among those sharing their drugs, and in such cases Walker partook of the drugs provided by those people. (Tr. 4438-39) According to Walker, he did not draw a distinction between record company representatives and the others present. (Tr. 4439, 4442) He maintained that the only drugs he was ever provided by record company representatives were those provided during these functions, and he emphasized that he never received from these representatives more drugs than he used there and then. (Tr. 4486, 4493-94) He denied that he was ever given drugs to be taken off the premises for future use or distribution. (Tr. 4438-39, 4486, 4493-94)

406. Walker explained that on no occasion did he have the impression that a record company representative was trying to induce him to put a record on the air in return for providing drugs. (Tr. 4496) He claimed that the drug scene was part of his and the others' lifestyle and that there was no explicit or implicit understanding of a quid pro quo. (Tr. 4487-88) He denied that the music selection decisions he made as Program Director of WHYI were ever influenced by the fact that he shared drugs with record company representatives on these "social occasions." According to Walker, it never caused him to play a record on the station or to place a record in an abnormally high rotation. (Tr. 4501)

407. Walker identified representatives of several record companies who did business with WHYI and with whom he had done drugs, although, in most instances, he could not remember whether they had supplied the drugs. Record company representatives with whom Walker socialized included Jordan Zucker (A&M Records), Steve Jones (Atlantic), Rich Tartanico (CBS), Jeff Shane (Epic), Ed. Nuhfer (Warner Brothers), Margaret Ann Ronayne (Motown), Dave Prescott (Artista), George Luthin (Polygram), and Shirley Torlucci (RCA). (Tr. 4418-19) He did not socialize with anybody from Scotti Brothers. (Tr. 4419) While unable to recollect specific instances, Walker said that over time he participated in "social" drug use several times with most of these people. (Tr. 4459-67, 4477-80) In all cases it was in a group setting, and Walker did not know in how many, if any, such instances the record company representative provided the drugs. He did recall that Ronayne, of Motown records, who was a close friend, did so on about half the occasions they used drugs together. (Tr. 4461, 4462, 4464, 4465, 4466, 4467 4474-75, 4478, 4479, 4480)

408. Walker did not remember specifically whether the record company representatives had given him drugs since drug use occurred in social situations where someone would come up and give him drugs, but he could not recall specific facts as to who gave what to whom. (Tr. 4414, 4420-21, 4431-36)

409. Walker related that other WHYI employees were present at gatherings where record company representatives were present and where drug use took place. Amadeo was present on roughly half the occasions when Walker did drugs with Ann Ronayne. (Tr. 4474) Amadeo was also present at many functions where drug use took place involving other representatives identified by Walker. However, Walker could not state with certainty whether Amadeo engaged in drug use with any of the representatives. He believed it likely that he did, since he had engaged in drug use with Amadeo and had observed Amadeo use drugs. (Tr. 4427, 4429, 4469) Walker recalled that Sonny Fox was present at functions involving drug use where record company personnel were present. While Walker did not know whether Fox engaged in drug use at these functions, he had personally done drugs with Fox on occasion. (Tr. 4429, 4482) Walker's best recollection was that other WHYI disc jockeys including Al Chio, Ron Hersey and "Cathy" attended some of these functions, although he did not know whether they participated in the drug use. (Tr. 4485-86) He had engaged in drug use with Chio, Hersey and "Kathy Crews."[23] (Tr. 4429) While he had no recollection as to whether specific individuals engaged in drug use at the "social" functions, it was his perception that everyone who attended them generally was doing drugs in the same manner as he was. (Tr. 4483-84)

410. As noted, *supra*, the drugs that Walker used were marijuana and cocaine. (Tr. 4457) His usage of drugs occurred at night, after work. (Tr. 4455) While not sure, he did not think he ever used drugs at WHYI's studios; he maintained that he was never under the influence of drugs while on the job. (Tr. 4424, 4455-56)

411. As an example of his drug use, Walker said he might smoke one, four, or six joints of marijuana over five to six hours, or use a quarter of a gram to a gram of cocaine. (Tr. 4457-58) A gram of cocaine cost $60 to $70 at that time; and an ounce of marijuana (which yielded about 30 joints) cost $30 to $50. (Tr. 4458) Walker used, at most, two or three grams of cocaine a week for short periods, costing about $200 a week. (Tr. 4490) Walker's annual salary at WHYI was about $78,000 when he began as Program Director and about $90,000 when he left, in addition to which he was paid bonuses. (Tr. 4491, 4499) In August 1986, Walker stopped using drugs and alcohol after a warning by Ross that his job was in jeopardy for having missed work. (Tr. 4445-58, 4452-53, 4503)

412. Although Walker had discussions with Ross about his absenteeism problem, he did not recall whether they had ever discussed his drug use. (Tr. 4446-48, 4451-52) To Walker's knowledge, the matter of his using drugs provided at social functions by record company representatives did not come up in their discussions. (Tr. 4499)

413. As noted in paragraph 313, *supra*, Ross made clear that he questioned Walker in August 1984, March 1986, and again in June 1987, whether he had participated in drug use with record company representatives and employees and that Walker, on all three occasions, vehemently denied that he had. (Tr. 682-84, 686-91) Amadeo, in March 1986, had similarly denied to Ross that he had been involved in drug use with record company representatives or employees. (Tr. 691) Amadeo, in his testimony in this proceeding, denied having participated in drug use with any record company representative or employee, including his friend Ann Ronayne. He also denied observing Walker participating in any drug use with record company representatives or employees. (Tr. 1279-80)

414. As noted in paragraph 406, *supra*, Walker denied that he ever caused a record to be played or to be played in an abnormally high rotation, or was influenced in his role as Program Director by the fact that he received drugs from record company representatives. (Tr. 4501) He maintained that he never favored or gave preferential treatment in his capacity as Program Director to any record company promoter or independent contractor who

provided him with drugs. (Tr. 4493) According to Walker, he made a very clear distinction between his personal problems and what he had to do at work. He stressed that he never compromised the product at the station for any reason. (Tr. 4493)

415. Walker did not consider his drug use with record company representatives in connection with his execution of WHYI's "payola" affidavits. He did not consider that he was receiving a reportable gift when cocaine was given to him by record company representatives at social gatherings. (Tr. 4489)

ULTIMATE FINDINGS AND CONCLUSIONS

1. Metroplex Communications, Inc. (Metroplex), seeks a grant of its application for renewal of the license of FM Station WHYI, Ft. Lauderdale, Florida. Southeast Florida Broadcasting Limited Partnership (Southeast) has filed a mutually exclusive construction permit application for the Station WHYI facility. As a result, a choice must be made between these two applicants. However, before addressing the comparative choice to be made, it must be determined whether Metroplex, during the period February 1, 1982, to date, violated Section 317 of the Communications Act of 1934, as amended, and/or Section 73.1212 of the Commission's Rules, 47 C.F.R. 73.1212, in the operation of Station WHYI and, if so, the effect on Metroplex's basic qualifications to be a Commission licensee. Additionally, it must be determined whether Southeast is financially qualified to construct and operate its proposed facility, and whether Southeast's certification as to its financial qualifications was false, and the impact on Southeast's basic qualifications to be a Commission licensee. The Commission has made clear, and the courts have affirmed, the principle that only basically qualified applicants are entitled to Commission consideration. *Louis Adelman*, 28 FCC 432 (1960); *aff'd sub nom Guinan v. Federal Communications Commission*, 111 U.S. App. D.C. 371, 297 F.2d 782 (1961); *Empire Communications Company*, 47 FCC 2d 329, 331 (1974). Therefore, it is both necessary and appropriate to first resolve the issues as to the basic qualifications of both applicants before undertaking the comparative evaluation.

The Metroplex Section 317 Issue

2. The Presiding Judge, by *Memorandum Opinion and Order* (FCC 87M-810), released July 31, 1987, as subsequently modified by *Memorandum Opinion and Order* (FCC 87M-2111), released September 8, 1987, designated an issue to determine whether Metroplex, in the operation of Station WHYI, during the period February 1, 1982, to date, failed to comply with the sponsorship identification requirements of Section 317 of the Act, as amended, and 47 C.F.R. 73.1212.[24]

3. Section 317 of the Act, as amended, reads, in pertinent part, as follows:

> Section 317(a)(1) All matter broadcast by any radio station for which any money, service, or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person: provided, that "service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.
>
> (b) In any case where a report has been made to a radio station, as required by Section 507 of this Act, of circumstances which would have required an announcement under this section had the consideration been received by such radio station, an appropriate announcement shall be made by such radio station.
>
> (c) The licensee of each radio station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section.

The reference in Section 317(b) to "a report" made to a radio station, "as required by Section 507 of this Act," is to the following requirement set forth in Section 507(a):

> Subject to subsection (d), any employee of a radio station who accepts or agrees to accept from any person (other than such station), or any person (other than such station) who pays or agrees to pay such employee, any money, service, or other valuable consideration for the broadcast of any matter over such station shall, in advance of such broadcast, disclose the fact of such acceptance or agreement of such station.

4. The cited statutory provisions impose three basic obligations on a Commission licensee: (1) to make a sponsorship identification announcement when matter is broadcast in return for any money, service or other valuable consideration received by the licensee (Section 317(a)(1)); (2) to make a sponsorship identification announcement when an employee reports to the licensee that matter is to be broadcast in return for valuable consideration received by such employee (Sections 317(b) and 507), and (3) to exercise "reasonable diligence" to ascertain from its employees information to enable it to make the required sponsorship announcement (Section 317(c)).

5. Both Metroplex and the Mass Media Bureau take the position that there must be an agreement or clear understanding that the reason that the broadcast of the program material occurred was because of the receipt of "valuable consideration" by the licensee or its employees. However, both Metroplex and Southeast acknowledge that the agreement needed to trigger Section 317 may be implied rather than express and, importantly, that an implied agreement may be found where the particular facts and circumstances warrant drawing an inference of program-related consideration having passed to the licensee or its employees. Metroplex and Southeast are also in agreement that a licensee could be found to have satisfied the "reasonable diligence" requirement of Section 317(c) of the Act, as amended, notwithstanding evidence that an employee en-

gaged in payola. Further, the Presiding Judge agrees with Metroplex that there can be no basis for holding that a licensee violated Section 317(c) where the evidence mandates a ruling that no payola occurred.

6. As noted, *supra*, Section 317(a) requires that sponsorship identification announcements be made when the licensee itself, as opposed to its employees, receives valuable consideration for broadcasting a particular matter. It is appropriate to consider the three instances in which Metroplex received something from record companies, promoters or recording artists; namely, (1) the receipt by WHYI of promotional and goodwill items; (2) the appearance of recording artists at WHYI concerts without a talent fee; (3) the receipt, after a request by WHYI, of records and/or cassette tapes.

7. The record establishes (paras. 339-350) that Metroplex, from time to time, received promotional or goodwill items from record companies or their representatives. The Presiding Judge agrees with Metroplex and the Bureau that no significant benefit was conferred on Metroplex or its employees, since these items were of nominal value and would not give rise to the need for sponsorship identification. *Kaye Smith Enterprises*, 71 FCC 2d 1402, 1408 (1979). There is no record evidence that the routine acceptance by Metroplex and its employees of promotional and goodwill items furnished by record companies influenced the music selection decisions of WHYI employees responsible for such selection.

8. The record also establishes (paras. 365-375) that, as a matter of general practice, Metroplex solicited the appearance of recording artists or groups without the payment of a talent fee. Metroplex sent letters to the record companies or their representatives soliciting them to provide artists and to waive talent fees. These concerts, however, were free concerts and Metroplex did not financially benefit from them, although it did receive favorable publicity in the community. The record establishes that the only airplay given the records of such artists was the normal airplay of the current record of the artist on the playlist in the station's regular rotation or the broadcast of "oldies" or "recurrents" of the recording artists who had no current hits. It is ruled that the playing of these "oldies" or "recurrents" did not result in any significant benefit to the artists or record companies in terms of record sales or exposure, since these records were not promoted by the record companies for sale in record stores and were not listed on WHYI's playlist. Additionally, the record does not support a finding that there was an implied agreement that WHYI would give airplay in return for the artists' appearance at these concerts. The record establishes (para. 370) that some artists asked WHYI if they could appear at the Birthday Party Concert even though WHYI had not made the request. It is apparent that artists valued the exposure these concerts gave them and were willing to perform without a talent fee.[25] More importantly, there is no evidence that the broadcast of these artists' records on WHYI was inconsistent with the station's established criteria for the selection of records to be broadcast.

9. The findings (paras. 351-362) establish that WHYI requested record companies to provide copies of the record albums or cassette tapes of the songs that WHYI had added to its playlist. WHYI had a standard practice whereby, after it had added a song to its playlist, a written request form was sent to the record company or its representative, requesting that WHYI be sent 50 copies of the album or tape. Additionally, WHYI conducted special weekend giveaway promotions, at which time it gave away to listeners on the air an album or tape of the featured artist who had a current hit on WHYI's playlist. On these occasions, WHYI requested of the record company or its representative anywhere from 25 to 150 copies of the album or tape be furnished to it. There is nothing in the record establishing that there was any airplay of the artist or the record beyond what was already being done in its normal rotation on the WHYI playlist.

10. Both Metroplex and the Bureau espouse the position that, in those instances where the records provided by the record companies were used by WHYI as prizes given away on the air, such a practice did not require sponsorship identification announcements. The Presiding Judge recognizes that the Bureau is charged with seeing to it that there is compliance with the sponsorship identification requirements of Section 317, and he accepts the opinion of the Bureau that the announcement of the name of the artist and the title of the record over the air at the time of the award of the prize falls within the proviso of Section 317(a) of the Act, as amended. It is ruled that, to the extent that the albums or tapes furnished WHYI by record companies were utilized by it for use as prize giveaways on the air, such practice came within the cited proviso of Section 317(a) of the Act, which exempts these recordings from the requirement of sponsorship identification announcements. The proviso, cited *supra*, qualifies the general rule that a sponsorship identification announcement is required when a station broadcasts matter in return for money, services, or other valuable consideration.

11. However, the findings (para. 354) establish that while most of the copies received by WHYI from the record companies were used for giveaway to listeners on the air, some were distributed to persons attending station promotional events or to local charitable organizations for use in fundraising. Equally important, some copies were used by WHYI employees for their personal collection. The Bureau is silent as to whether its conclusion that sponsorship identification announcements were not required is applicable with respect to those albums or tapes not given away as on the air prizes. The Presiding Judge is not persuaded by Metroplex's argument that those copies not used for on the air prizes "are superfluous" and, therefore, not within the scope of the sponsorship identification requirements.

12. The *House Report on 1960 Amendments* [26] set forth a number of examples to illustrate the intended effect of the proviso clause of Section 317(a)(1), cited *supra*. Example (1) reads:

> A record distributor furnishes copies of records to a broadcast station or a disc jockey for broadcast purposes. No announcement is required unless the supplier furnished more copies of a particular recording than are needed for broadcast purposes. Thus, should the record supplier furnish 50 or 100 copies of the same release, with an agreement by the station, express or implied, that the record will be used on a broadcast, an announcement would be required because consideration beyond the matter used on the broadcast was received.

This example makes clear, in the Presiding Judge's view, that broadcasters should limit their receipt of free records from record companies to those needed for "broadcast purposes." While accepting the Bureau's position that the use of such records or tapes for on the air giveaways is consistent with Example (1), the Presiding Judge is not persuaded that the same conclusion can be reached with respect to WHYI's use of these records for purposes other than as on the air giveaways.

13. Example (7) in the *House Report* reads as follows:

> A perfume manufacturer gives five dozen bottles to the producer of a giveaway show, some of which are to be identified and awarded to winners on the show, the remainer to be retained by the producer. An announcement is required since those bottles of perfume retained by the producer constitute payment for the identification.

This example makes clear that a sponsorship identification announcement is required when a broadcaster is furnished quantities of an item of which some are "to be identified and awarded to winners" on the air and the remainder of the items "to be retained" by the broadcaster. The Commission, in its Public Notice re *Applicability of Sponsorship Identification*, cited, *supra*, emphasized in note 1 that the same principles apply to records as to "other property or service" furnished to a broadcaster. Contrary to Metroplex's contention, it is ruled that the records retained by WHYI and used for purposes other than on the air giveaways, constituted "payment for the identification" and an appropriate sponsorship announcement was required.

14. The Presiding Judge does not agree with the Bureau and Metroplex that the consideration (the 50 records) necessary to trigger a sponsorship identification announcement must be offered to the broadcaster *before* the record is placed on the WHYI playlist and initially broadcast. The WHYI practice of formally requesting 50 copies of the record was so well established over a long period of time that it was a *modis operandi*, known and accepted by the record industry. Stated simply, the record industry was well aware that they would be expected to provide the requested 50 recordings and there was a well established understanding that they would comply.

15. Admittedly, there appears to be no precedent with respect to this particular fact situation. In view of the fact that this is a novel question, a conclusion that WHYI wilfully and/or knowingly violated the sponsorship identification requirements of Section 317 of the Act is not warranted. However, the Presiding Judge is constrained to express his serious reservations as to the appropriateness of the practice followed by WHYI in requesting 50 copies of the albums and tapes from the record companies and utilizing some of these records for purposes other than on the air giveaways. Hopefully, the Commission, in reviewing this case, will give broadcasters and subordinate Commission authority further guidance on this matter.

16. As noted in paragraph 4, *supra*, Sections 317(b) and 507 of the Act impose the obligation upon a Commission licensee to make a sponsorship identification announcement when an employee reports to the licensee that matter is to be broadcast in return for valuable consideration received by such employee. The findings establish that no such report was ever submitted by any WHYI employee to Metroplex management. As noted, *supra*, Section 317(c) of the Act, requires a Commission licensee to exercise "reasonable diligence" to ascertain from its employees information to enable it to make the required sponsorship identification. The Presiding Judge rejects the contention of Southeast that Metroplex should be held to the "special diligence" and "extraordinary measures" standard rather than the "reasonable diligence" standard. The Commission has made clear that it sees no reason to believe that the "reasonable diligence" standard is ineffectual and this standard will be held applicable in this case.[27] *Plugola Policy*, 76 FCC 2d 221, at 223 (1980); *Unnecessary Broadcast Regulation*, 57 RR 2d 913, at 918 (1985).

17. Before addressing the specific incidents which give rise to the question whether any WHYI employees received "valuable consideration" for the broadcast of any matter over WHYI, it is appropriate to consider and resolve whether Metroplex, as the licensee of WHYI, exercised the requisite "reasonable diligence" in overseeing its employees' activities. The "reasonable diligence" requirement of Section 317(c) is a preventive measure to ensure that Commission licensees make diligent efforts to have appropriate procedures for obtaining information from their employees to enable the licensee to comply with the sponsorship identification requirements of the Act. The measures undertaken by Metroplex are detailed in the findings (paras. 288-327). It is found that Metroplex did have such policies and practices in effect and that they were communicated to its employees.

18. The findings establish a history of licensee concern with measures to control and avoid the possibility of payola at station WHYI. These policies and procedures were operative during the relevant time period, namely, February 1, 1982, to the time of this proceeding. The procedures utilized by the licensee to inform employees of the station's policy against payola included the periodic submission of "payola affidavits" by employees; the circulation of an "Employee Handbook" which dealt with this subject, and other memoranda dealing with the problem of payola. Additionally, in 1979, 1986 and 1987, Metroplex's management distributed the NAB memorandum which deals with payola to WHYI's air staff. Also, during the pertinent time period, Ross, WHYI's General Manager, had discussions with station personnel during which he emphasized his concern that there be compliance with the sponsorship identification requirements and expressed his serious concern that payola was to be avoided at all cost. As detailed in paragraphs 315-327, Metroplex established a music selection process and retained a program consultant in an effort to prevent outside influences from affecting the selection of the records broadcast on WHYI.[28]

19. The findings demonstrate that WHYI management continually sought to educate and sensitize its employees as to the impropriety of payola by communicating the licensee's concern about payola and cautioning employees that they were not to play records in return for consideration received from record companies or promoters. The Presiding Judge rejects Southeast's claim that the efforts of Metroplex reflect no more than a "token effort" to ensure compliance with Section 317 of the Act. It is concluded that Metroplex communicated its policy to its employees and established a regular reporting system to safeguard against payola. It is ruled that, while the execution of

these policies and procedures were not without flaws, Metroplex demonstrated "reasonable diligence" to ensure that nothing was broadcast on WHYI in return for undisclosed consideration to employees from record companies.

20. Directing attention to the specific incidents concerning which evidence was adduced with respect to the receipt by employees of consideration from record companies, it has already been concluded in paragraph 7, *supra*, that no significant benefit was conferred on WHYI employees by their receipt of promotional or goodwill items, and that there is no record evidence that the routine acceptance of such items influenced the music selection decisions of WHYI employees. It is further ruled that these goodwill items did not constitute "valuable consideration" and no sponsorship identification announcement was required. *Kaye Smith*, *supra*, at 1408.

21. As set forth in the findings (paras. 376-390), Robert Walker and Frank Amadeo, WHYI's Program Director and Music Director, respectively, were each offered two tickets to the 1986 Grammy Awards ceremony in Los Angeles by a representative of Scotti Brothers, a record promoter. Walker and Amadeo requested and received authority from Ross, WHYI's General Manager, to accept the tickets provided they pay their own transportation and hotel expenses in connection with the event. Neither Ross, Walker, or Amedeo were aware that Scotti Brothers had paid $350 each for the four tickets. Walker and Amadeo had assumed that the tickets were the equivalent of concert tickets, with a value of $20 or $30, and Ross, who understood that admission was by invitation only, was unaware that the tickets involved any cost to the recipients. Scotti Brothers arranged the transportation for Walker and Amadeo and their two guests, and billed Amadeo for the $398 cost representing two $199 roundtrip tickets. The Presiding Judge agrees with Southeast that it is likely that neither Walker or Amadeo would ever have paid for these tickets had the matter not been raised during this proceeding. Nevertheless, their failure to have done so timely cannot be attributed to the licensee, since Ross had emphasized to them that they were to defray their own expenses in attending the Grammy Awards ceremony. The Presiding Judge agrees with Metroplex that there was no reason why Ross would have either assumed or suspected that Walker and Amadeo had failed to reimburse Scotti Brothers for their airplane tickets; particularly since they had assured Ross that they would pay their own expenses for the trip.

22. Both Walker and Amadeo denied that the receipt of the Grammy Awards tickets influenced their decisions relative to music selections on WHYI. More importantly, the evidence does not disclose any excessive or unwarranted play of Scotti Brother's records during the pertinent time period. It is ruled that the licensee exercised "reasonable diligence" in connection with this incident, and that no adverse ruling is warranted with respect to this matter.

23. The drug use by WHYI employees is chronicled in the findings (paras. 401-415). Walker, during the time he was WHYI's Program Director, had a drug and alcohol dependency problem. He attended numerous parties with record company representatives and promoters and on those occasions, engaged in drug use with those individuals. The Presiding Judge is not persuaded by the arguments of Metroplex and the Bureau that Walker's acceptance of drugs from promoters "in this social context" precludes finding that "payola" was involved. The *Kaye Smith* case, cited *supra*, is not controlling as to this particular fact situation. The unpleasant fact is that Walker, because of his drug dependency, was the ready recipient of drugs from record promoters who, understandably, were anxious to ingratiate themselves with him. That Walker was unwilling or unable to recognize this fact does not lessen the seriousness of the situation. However, the record does not support the holding, urged by Southeast, that Ross, the General Manager, knew of Walker's drug problem or that he was aware that Walker was the recipient of drugs from record promoters. Ross acknowledged that he was aware that Walker had a drinking problem and had, in fact, discussed his drinking and absenteeism with him. However, on those occasions (paras. 313-314), when Ross questioned Walker, he vigorously denied that he was doing drugs with record company promoters. A licensee is not the guarantor as to its employees' behavior during nonworking hours; rather, its duty is to exercise "reasonable diligence" to safeguard against payola. The Presiding Judge, who carefully observed Ross while testifying, is convinced that he was truthful in his testimony and reasonably diligent in his efforts to safeguard against payola. Walker lied to Ross when questioned about his relationship with record promoters. Amadeo, the Program Director, also misled Ross when he denied any involvement in drug use with record promoters. It is ruled that the licensee was reasonably diligent in its efforts to safeguard against this pernicious form of payola.

24. The Presiding Judge recognizes that Walker and Amadeo effectively controlled WHYI's Music Committee and, thus, the selection of music broadcast on WHYI. However, there is no evidence that there was any other than normal airplay of the records on WHYI's playlist or that any records were placed on the playlist contrary to the established criteria for the selection of records.

25. The weekly playlists of WHYI, and other radio stations, were published in *Radio & Records*, a trade publication. The practice of "paper adds," as described by Amadeo (paras. 393-398), involved reporting to the trade press that WHYI was playing certain records when such records were not part of WHYI's regular rotation. Sections 317 and 507 prescribe the *playing* of records on the air for undisclosed consideration. The Presiding Judge agrees with Metroplex and the Bureau that, while "paper adds" are an improper business practice, this practice does not constitute a violation of Sections 317 or 507 of the Act and does not adversely impact on Metroplex's qualifications to be a broadcast licensee. It is also ruled that Amadeo's unauthorized sale of records from WHYI's supply represents employee misbehavior and does not reflect on Metroplex's qualifications to continue as the licensee of Station WHYI. It is concluded, for the reasons articulated, *supra*, that the Section 317 issue is resolved in Metroplex's favor.

Southeast Financial Certification Issue

26. The Presiding Judge enlarged the issues to determine the facts and circumstances surrounding the certification of Southeast's financial qualifications and whether such certification was false (*Memorandum Opinion and Order*, FCC 87M-1287, released June 4, 1987). The findings (paras. 190- 227) detail that Gloria Butler (Butler), Southeast's General Partner, certified that Southeast had sufficient net liquid assets on hand or available

from committed sources to construct and operate the proposed facility for three months without revenue. Butler relied upon cost estimates prepared by Southeast's communications counsel and its engineering consultant. Counsel was the sole source of the estimated operating costs and the engineering consultant was solely resonsible for the estimated equipment and installation costs (paras. 193-215) The record is silent as to the basis for the estimated operating costs, since Butler had no idea what such basis was and counsel, the author of these estimates, did not testify in this proceeding. Southeast argues that these initial operating cost estimates were not "patently unreasonable," and that it was not unreasonable for Butler to rely upon counsel for such estimates. However, the record discloses that the operating costs were seriously underestimated, and that Butler, who had no experience or knowledge concerning the operation of a broadcast facility, had no basis, in fact, to conclude that counsel was qualified to make such estimates or that such estimates were reasonable. Certainly, nothing in Butler's background or experience qualified her for the task of estimating operating expenses. Additionally, she undertook no inquiry, investigation, or research with regard to these estimates to place herself in a position to ascertain whether they were reasonable or not. Her acceptance of the estimates of operating costs prepared by her communcations counsel represented a leap of faith, rather than a reasoned evaluation or decision. Certainly when an applicant is required to explain the basis for such estimates, it should, at a minimum, meet its burden of making the author of the estimates available for questioning.

27. Southeast, in its Reply Findings (paras. 19-22), attempts to distance itself from the revised operating estimates which are now part of its proposal, and which were prepared and offered by its "expert." This attempt at abandoning its present financial proposal is categorically rejected as improper and inappropriate.

28. There is no basis whatsoever shown in this record for the $12,500 cost estimate for site rental. Butler was aware that WHYI was, for the reasons detailed in the findings (para. 207), operating from two sites, namely, the candelabra tower and the Gannett tower. She had been informed by the Southeast engineering consultant that no antenna costs had been included to replicate the Gannett antenna because such cost was "prohibitive." While the Presiding Judge accepts Southeast's position that it only intended to operate from one of these two sites, it was incumbent upon the applicant to have appropriately ascertained the cost for such operation. The record establishes that operation from the Gannett site would result in an additional cost in excess of $166,000. Southeast, in revising its estimated costs, has adopted this cost as its own. It is ruled that Southeast's failure to have made any effort to ascertain the antenna cost involved in operating from the Gannett site represents an abdication of its duty to exercise reasonable and/or prudent judgment.

29. Both Metroplex and the Bureau contend that the initial cost estimates were fundamentally flawed by the failure to include the $500,000 bonus to Cohen & Berfield. Southeast, in its reply, argues that the written terms of the retainer agreement are consistent with the understanding of Southeast's principals that the bonus would not come due until after the first three months of operation. While the Presiding Judge agrees with Southeast's basic position that the $500,000 bonus to counsel need not have been included as a cost of construction and/or operation, since such payment is not due within the three month period, he is not persuaded by the *post litem* arguments set forth in paragaphs 24-27 of its Reply Findings. Stated simply, the Presiding Judge accepts the position espoused by the principals of Southeast that it was always their understanding that this generous bonus was not to be due and payable until at least three months after commencement of station operation. In reaching this conclusion, the Presiding Judge expresses an awareness of the realities of the situation; namely, that if Southeast was the successful applicant that it would be the holder of a permit valued in the millions of dollars and would have little difficulty obtaining the necessary financing to meet this obligation. Additionally, it is recognized that communications counsel, who was the major architect of the Southeast proposal, could not be expected to demand payment of the bonus if it would jeopardize Southeast's ability to operate the broadcast facility.

30. The Presiding Judge rejects the contention of Metroplex that the CMNY loan commitment, which was initially for $600,000, represented an "accommodation." Metroplex's citation of this Presiding Judge's ruling in the *KFRC* proceeding (*RKO General, Inc.* ; Partial Initial Decision, FCC86D-49, released August 8, 1986) is distinguishable; there it was ruled that the bank had no intention of making such a loan. In the instant case CMNY, the lender, has an ownership interest in the applicant, and the facts do not warrant concluding that the loan was not made in good faith. Significantly, however, the loan provided that the collateral for such loan would be "all the tangible assets of the partnership and personal guarantee and pledge of assets of each of the principals as deemed necessary by CMNY." Other than Perry's expression to Butler of his willingness to guarantee the loan, Butler had no assurances from any of the other principals that they were prepared to meet these stringent collateral requirements. If the purpose of limited partnership is to limit the liability of its limited partners, any requirement that they, in effect, pledge their life and property in connection with such an endeavor should be explicitly evidenced in writing. Southeast's limited partners have maintained throughout this proceeding that they chose Butler as Southeast's only General Partner because of her business experience and acumen. Butler's failure to have sought and received evidence that the other limited partners were willing to place all of their personal assets at risk, does not represent the actions of an experienced business person. Butler should, if she did not, have realized that CMNY had the option to require that all the principals of Southeast agree to the collateral requirements and, that, unless they were willing to do so, the loan would not be forthcoming. It is ruled that it was not reasonable for Butler, in certifying that Southeast was financially qualified, to have relied on the loan for financing Southeast's proposal.

31. At the time Butler executed the application and represented that Southeast had sufficient net liquid assets to construct and operate the station, the limited partners had advanced only $50,000 of the $200,000 commitment they had made to finance the prosecution of Southeast's proposal. It is ruled that Butler's reliance upon counsel's assurance that the limited partners were capable of meeting their commitments of $150,000 cannot be construed as "reasonable." It was obligatory that she determine the financial capabilities of the limted partners to meet their

obligation.[29] The Commission, in the past, has approved financial plans and financial qualifications based in part upon the payment of legal fees on a current basis. *Muncie Broadcasting Company*, 54 RR 2d 42, 46-47 (1983). In the Presiding Judge's view, when an applicant is certifying to its financial qualifications, the individual so certifying must have made reasonable efforts to determine that the principals of the applicant have the financial wherewithal to meet their future obligations to make their payment of "legal fees on a current basis." Butler had no knowledge as to the assets or liabilities of the limited partners and such knowledge was a prerequisite to any determination and representation as to their liquid assets. The fact that these limited partners later made the requisite contributions when called upon to do so does not resolve the question in Southeast's favor. It was incumbent upon Butler to have acquired the necessary information as to the liquidity of the limited partners' assets prior to making the representation to the Commission.

32. Both the Commission and the courts have emphasized over the years that this agency's scheme of regulation is premised on the Commission's ability to depend upon the accuracy and truthfulness of the representations of its prospective licensees. The Court of Appeals has stated that this Commission must rely heavily upon the completeness and accuracy of the submissions made to it and that applicants have an affirmative duty to inform the Commission of the facts the Commission needs to know in order to fulfill its statutory mandate. *RKO General, Inc. v. F. C. C.*, 670 F.2d 215, 232 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 927 (1982). The Commission, in noting that lack of candor involves concealment, evasion and other failures to be fully informative, has been emphatic that lack of candor represents deceit. *Fox River Broadcasting, Inc.*, 93 FCC 2d 127, 129, 53 RR 2d 44, 46 (1983).

33. It is ruled that Butler acted irresponsibly in certifying as to Southeast's financial qualifications; that such action represents a gross and callous disregard for the Commission's requirements, and evidences a lack of candor, standing as the basis for disqualification. However, the Review Board recently, in *Northampton Media Associates*, 3 FCC Rcd 5164 (1988), ruled that the test with respect to financial certification is whether the applicant "made *deliberate misrepresentations* regarding its financial qualifications in executing its financial certification."[30] While Butler's actions with respect to certification can appropriately be characterized as cavalier, if not totally irresponsible, the Presiding Judge feels constrained to rule, as did the Review Board in *Northampton Media Associates*, that the "blunderbust of disqualification" is not warranted. For this reason, the financial certification issue is resolved in Southeast's favor.

Southeast's Financial Qualifications Issue

34. As noted, *supra*, Southeast revised its estimated operating costs and its equipment and installation costs, so that the total estimated cost of construction and operation is $828,050. To meet these estimated costs, Southeast relies upon a loan commitment letter from CMNY for $900,000. The Presiding Judge rejects Metroplex's contention that Southeast's revised cost estimates do not reflect "a consistent, considered and substantiated picture of construction and operating costs . . . " that it must meet. While Southeast's expert witness proffered with respect to operating costs, admittedly overlooked a few minor cost items, the cushion of $71,950 is adequate to cover these costs. The Bureau's claim that Southeast failed to include the cost of operating from both the Gannett and candelabra sites is rejected. Southeast has made clear that its proposal is for operation from one site and it has provided adequate cost estimates to cover operating costs for either the Gannett or candelabra site.

35. Metroplex's attack on the $900,000 loan commitment from CMNY is rejected. The loan letter spells out the "essential details" as to the terms of the loan, including the length of the loan, the interest rate, a moratorium on principal and interest for the first three months, collateral requirements, and the statement of intent by CMNY to make such loan. It is ruled, contrary to Metroplex's contentions, that the loan commitment provides "reasonable assurance" of the availability of the necessary funds to construct the station. *Multi - State Communications, Inc. v. F. C. C.*, 590 F.2d 1117, 44 RR 2d 487 (D.C. Cir. 1978); *Las Vegas Valley Broadcasting Co. v. F. C. C.*, 589 F.2d 594, 44 RR 2d 683. In the *Las Vegas Valley* case, the court made clear that the "reasonable assurance standard" as to the standard for loan commitments is particularly important in a renewal comparative hearing in order to avoid "a pro-incumbent bias" in favor of the renewal applicant. The attack by Metroplex on CMNY's ability to make such loan is also rejected. CMNY is a small business investment company (SBIC) licensed pursuant to federal statute to make such loans. The Commission has recognized SBICs as financial institutions which are not required to establish their ability to make a proposed loan. *Washington Christian Television Outreach*, Mimeo No. BC 002820, released August 19, 1981. In conclusion, it is ruled that Southeast has shown that it has reasonable assurance of the availability of sufficient funds to meet its estimated cost of construction and operation of its proposed facility.[31]

The Comparative Issue

36. Having found that both Metroplex and Southeast possess the requisite qualifications to be a broadcast licensee, it is appropriate to determine which of these mutually exclusive proposals would, on a comparative basis, better serve the public interest. This comparative evaluation, of necessity, involves a choice between a renewal applicant, Metroplex, the licensee of WHYI, which has been operating the facility, and a permit applicant, Southeast, which seeks the opportunity to operate the facility in the future. The Communications Act of 1934, as amended, and court precedent, require that a full comparative evaluation be made with respect to these mutually exclusive applicants. *Ashbacker Radio Corp. v. F. C. C.*, 326 U.S. 327 (1945); *Citizens Communications v. F. C. C.*, 145 U.S. App. D.C. 32, 447 F.2d 1201 (1971), clarification granted, 149 U.S. App. D.C. 419, 463 F.2d 822 (1972).

(a) *WHYI Renewal Expectancy*

37. It is well established that if a broadcast renewal applicant has provided "meritorious" or "substantial" service to the public, it is entitled to a legitimate renewal expectancy and, as a result of such an award, can reasonably be confident of renewal of its licensee. *Cowles Broadcasting, Inc.*, 86 FCC 2d 993 (1981), *aff'd sub nom Central Florida Enterprises, Inc. v. F. C. C.*, 683 F.2d 503 (D.C.

Cir. 1982); *Radio Station WABZ, Inc.*, 90 FCC 2d 818 (1982), *aff'd sub nom Victor Broadcasting, Inc. v. F. C. C.*, 722 F.2d 756 (D.C. Cir. 1983).

38. The Commission has recognized that focusing on the program evaluation of a renewal applicant's past performance in the comparative renewal process has disadvantages in that such qualitative evaluation is an inherently subjective process. However, such evaluation is presently the test applicable for determining whether the existing renewal applicant is entitled to a renewal expectancy and such an evaluation is set forth, *infra*. In determining whether a broadcast licensee has provided substantial service to its listening public, it is appropriate to determine whether the licensee ascertained the community needs and problems and whether its programming was responsive to those needs and problems. Such an evaluation should also give serious weight to any showing of public support for, or objections to, the station's performance during the pertinent time period and also any record of violation of the Commission's rules or policies. *Pillar of Fire*, 99 FCC 2d 1256, 1259-1276 (Rev. Bd. 1984), review denied, 2 FCC Rcd 519 (1987); *United Broadcasting Company, Inc.*, 100 FCC 1574, 1581 (1985).

39. Before considering WHYI's record of performance during the pertinent time period, namely, December 20, 1985, to December 20, 1986, it is appropriate to review the legal standards for judging a renewal applicant's past broadcast record. *Cowles Broadcasting* and *WABZ*, cited *supra* ; *Broadcast Communications, Inc.*, 93 FCC 2d 1162 (Rev. Bd. 1983), modified 97 FCC 2d 61 (1984), aff'd by judgment *sub nom Genesis Broadcasting, Inc. v. F. C. C.*, No. 84-1154 (D.C. Cir., filed March 29, 1985); and *Kaye - Smith Enterprises*, 98 FCC 675, recon. denied 98 FCC 2d 670 (Rev. Bd. 1984), rev. denied FCC 85-192, released April 19, 1985, aff'd by judgment *sub nom Hoffart Broadcasting v. F. C. C.*, D.C. Cir. No. 85-1266, decided April 16, 1986. The cited cases establish that a substantial record, sound, favorable and substantially above a level of mediocre service, gives rise to a renewal expectancy which, in turn, warrants a comparative preference.

40. Both the Commission and the courts have indicated a disinclination to gauge, to any controlling degree, a station's responsiveness by a quantitative standard: for as articulated, *supra*, the principal test of a licensee's entitlement to renewal expectancy rests upon its diligent and continuing efforts to discover and fulfill the needs and problems of its community. *WPIX, Inc.*, 68 FCC 2d 381, 400 (1978). The Review Board has stressed that the proper focus in evaluating an incumbent licensee's record in a comparative renewal case is a qualitative one. *Intercontental Radio, Inc.*, 98 FCC 2d 608 (Rev. Bd. 1984), modified 100 FCC 2d 817 (1985).[32] The cited Commission and court precedent mandate a review of the record as to "objective or concrete evidence" that WHYI has searched out and attempted to serve through its programming the community needs and problems. *Video 44*, 3 FCC Rcd 3587, 3591 (Rev. Bd. 1988).

41. It is ruled, for the reasons set forth, *infra*, that the record in this proceeding warrants concluding that the past performance of Station WHYI during the pertinent time period has been substantial. The Presiding Judge agrees with the Bureau that the findings (paras. 14-19) demonstrate that WHYI participated in appropriate ascertainment efforts during the renewal period. WHYI participated in formal group community leader ascertainment interviews and also engaged in informal ascertainment efforts through the community involvement of its employees, and, additionally, was made aware of community problems and needs through on-air interaction with the station's listeners during discussions of community issues. It is found that WHYI conscientiously undertook to identify the needs and problems of its community and the area it served.

42. The findings (paras. 20-87) establish that WHYI was actively involved in the promotion of charitable and community service activities, providing both on-air and on-site support to numerous charitable and public service organizations. It both broadcast public service announcements for such organizations and provided station personnel and equipment to promote worthwhile community efforts. WHYI utilized its radio facilities to mobilize community support for numerous charitable causes and civic activities. WHYI evidenced a commitment and dedication to involvement in its community. Southeast attempts to denegrate these community efforts by arguing that they were a "carefully orchestrated aspect" of WHYI's station promotion, and had as their main purpose achieving name recognition both for WHYI and its on-air staff. Certainly, WHYI was not adverse to promoting the station and its call letters, but this is not inconsistent with its effective efforts to serve numerous community programs and activities and does not detract from those efforts.

43. The Presiding Judge also agrees with the Bureau that WHYI programmed to meet ascertained needs through "regularly scheduled locally produced weekly public affairs programs." WHYI, through such programs as "Y's Rap," which featured interviews with guests on a wide range of topics, responded to ascertained needs, and "Here's Help," which focused on, among other subjects, the drug problem prevalent in the area. Equally important, during its weekday "Morning Show," broadcast from 6 to 10 a.m., there were numerous discussions on a wide variety of issues of importance to the community. Additionally, WHYI broadcast traffic reports, weather reports, information on school closings and school lunch menus, and the scores of local sporting events. While WHYI's news broadcasts centered in the morning hours, it is found that these newscasts also served the public in the area. Southeast's efforts to minimize WHYI's programming efforts is rejected. The Commission recently indicated that each licensee has very broad discretion in selecting programming that it believes responsive to the community's needs and problems, and it would be inappropriate for the Commission to substitute its judgment for the editorial discretion accorded WHYI as to the scheduling of its programming designed to meet community needs. *Programming Information in Broadcast Applications*, 3 FCC Rcd 5467 (1988); *Comparative Renewal Process*, 3 FCC Rcd 5179 at 5181 (1988).

44. Both the Commission and the courts have emphasized that a station's reputation in its community as a local outlet must be given significant consideration. It has long been recognized that community leaders, who are active in charitable and civic organizations, and members of the general public are in a unique position to evaluate a local station's performance in meeting community needs. As detailed in paragraphs 93-116 of the findings, testimony was given by 23 public witnesses from governmental, charitable, civic, and business organizations in support of WHYI's performance as a local outlet.[33] This outpouring of public support and the total absence of any public witnesses questioning WHYI's operation is further

evidence of the licensee's sensitivity to the needs of the community and its successful meeting of such needs. The Presiding Judge, *supra*, evaluated the evidence with respect to WHYI's practices and procedures relative to sponsorship identification, and has found that such evidence does not warrant disqualification of WHYI. It is further ruled that the evidence adduced does not seriously impact upon the finding that WHYI's programming has been meritorious. The deficiencies with respect to sponsorship identification matters were not of such a nature as to seriously detract from WHYI's meritorious programming efforts.

45. It is concluded, as urged by the Bureau, that WHYI's ongoing ascertainment efforts and resulting programming demonstrated a sensitivity and responsiveness to the needs of the community, and that such performance warrants a characterization of "substantial" or "meritorious," resulting in the award of a strong comparative preference to WHYI.

(b) ***Integration and Diversification***

46. Metroplex proposes no integration of ownership and management and, therefore, is entitled to no integration credit. Southeast, on the other hand, claims that it is entitled to credit for 100 percent integration. This claim rests upon the fact that Southeast, as a limited partnership, has a twotiered ownership structure with the limited partners having a 96 percent equity interest and the General Partner, Gloria Butler, having a 4 percent equity interest. Southeast proposes that Gloria Butler will be the full-time General Manager of its proposed facility. The Commission has made clear that it will accord applicants flexibility in structuring their proposal, without "second-guess[ing] applicants' business judgment - so long as it is, in fact, a good faith business decision." *Victory Media, Inc.*, 3 FCC Rcd 2073, 2075 (1988). However, it is not only appropriate but necessary that such twotiered structures be scrutinized with great care. Such putative ownership structures must be evaulated to guard against sham applications that manipulate comparative criteria to maximize a paper preference. The Presiding Judge is obligated to determine whether Southeast's proposed structure genuinely reflects the composition of the applicant, or whether it is "an utterly artificial construct" devised exclusively for the purpose of exploiting the Commission's comparative evaluation process. *Religious Broadcasting Network*, 3 FCC Rcd 4085, 4088 (Rev. Bd. 1988).

47. As conceded by Metroplex, Southeast's limited partnership agreement contains all of the "inclusive provisions" required by the Commission's attribution policy.[34] Stated simply, there is nothing in the Southeast partnership agreement that undermines the *bona fides* of the proposed ownership structure. However, this fact does not end the inquiry, and, as set forth, *infra*, the particular facts with respect to the conception, initiation, formation, and prosecution of the Southeast proposal mandates the conclusion that this limited partnership structure is not entitled to the 100% integration credit it claims. The findings (paras. 119-185) detail the history of the initiation and formation of Southeast. These findings establish that it was the limited partners, at the initiation of communications counsel, who formulated the plan for the creation of Southeast and the filing of the construction permit application. Perry and his associates, with the guidance of communications counsel, arranged the essential details of the proposal, specifying the percentages of ownership and the method of financing, and then, and only then, sought out a General Partner who would have the comparative strengths of being a female and a member of a minority group. The Perry group of limited partners, who hold 75% of Southeast's equity, interviewed Gloria Butler, the prospective General Partner, and limited her equity interest to 4 percent. Butler, on her part, recognizing that she was not required to make any financial investment whatsoever in the venture, accepted the very modest equity interest and the role established for her by these limited partners.

48. The Review Board, in recent years, has considered the question whether ownership of less than a 5 percent interest by the "active partner" is so insubstantial as to warrant no credit being accorded ownership.[35] The Commission, to date, has not directly spoken on this question and, the Presiding Judge is disinclined to award any ownership integration credit to Gloria Butler, whose 4 percent equity holding is deemed so insignificant by the Commission as to be neither cognizable or even reportable as a media ownership interest. Nevertheless, the Presiding Judge, like the Board, will give Southeast the benefit of the doubt and rule that the fact that Gloria Butler's ownership interest is less than 5 percent does not, standing alone, warrant holding that no integration credit is to be accorded Southeast. *Independent Masters, Ltd.*, 104 FCC 2d 178, 193 (Rev. Bd. 1986); *Religious Broadcasting Network, supra*. However, the modest nature of the General Partner's equity interest in Southeast is a factor to be considered in determining whether the claimed 100% integration should be awarded.

49. Southeast's contention that the Commission's ruling in *Victory Media*, cited *supra*, mandates ruling that Southeast's two-tiered limited partnership is *bona fide* and entitled to 100 percent integration credit is rejected. In the instant case, it was communications counsel and Perry, one of the limited partners, who were responsible for the initiation and formulation of the venture. It was Perry who helped to recruit many of the other limited partners, and it was this group of limited partners (the Perry group) that determined the legal form of the entity, its equity capital and contribution structure. Additionally, it was the Perry group of limited partners which approved the financial arrangement with communications counsel and approved the selection of Gloria Butler (Butler) as the General Partner. Butler played no role in making these important decisions and had not been chosen as the General Partner at the time of such discussions. Also significant is the fact that Butler, as the General Partner, has abdicated any control over Southeast's funds. Her control of the partnership's bank account is meaningless because of the trivial sum that was deposited in that account. The Presiding Judge agrees with Metroplex that Butler's power of the purse is "illusory."

50. Additionally, the Perry group of limited partners, at the May 16, 1986, meeting, agreed that they would retain the right to determine whether, at the time the Southeast application was designated for hearing, they would abort the project. This determination was made before the General Partner was even chosen, and it was clear that the General Partner, Butler, had no voice with respect to this matter. Even after Butler became the General Partner, her role was minimal. She played no part in negotiating or revising the CMNY loan commitment for Southeast. She similarly played no role in hiring Southeast's engineer or its broadcast consultant. Nor was she aware of

the compensation to be paid these agents of Southeast. Lastly, her consent to transfer a portion of Baer's limited partnership interest to others was a mere formality, in that she made no effort to obtain any information about the new limited partners. The findings disclose that the members of the Perry group looked to Perry as the experienced broadcaster and it was because of his background and experience that they committed themselves to the venture. Butler has no broadcast experience and has played, at most, a minimal role with respect to the prosecution of the Southeast application. The particular facts in this case contrast sharply with the facts in *Victory Media*, where all out-of-pocket expenses were divided evenly among the voting and nonvoting shareholders; the nonvoting shareholder knew the voting shareholder for 10 years and the equity interests of the voting shareholder had been negotiated. It is ruled that the totality of the evidence mandates holding that Southeast has failed to establish that its two-tiered ownership structure is *bona fide*, warranting the award of intergration credit.[36] The record does not support any sound business reason for Southeast's structure, other than an attempt to garner a comparative integration credit and, as a result, it is ruled that its integration proposal is rejected as a sham. *Northampton Media Associates*, cited, *supra*.

51. Turning to the question of the diversification of the mass media, it should be noted that media interests of truly passive, insulated, nonattributable limited partners are not counted against the applicant. *Daytona Broadcasting Company*, cited, *supra*. However, it is ruled that the media interests of Southeast's limited partners are attributable to Southeast for diversification purposes in view of the holding that its two-tiered structure was not *bona fide*. The findings set forth the extensive media interests of Metroplex, both in Florida and in other areas of the country and, also, the media interests of the Southeast limited partners. It is ruled that Southeast is entitled to a moderate preference with respect to the diversification of the media of communication.

52. As fully discussed, *supra*, the Commission and the courts have both emphasized that primary significance is to be accorded a broadcaster's past performance, since this factor affords the strongest and most reasonable basis for determining whether the public interest will be served by license renewal. It has been determined that Metroplex is entitled to a strong preference for its past broadcast operation during the relevant license period. This preference is controlling as to the comparative choice made between Metroplex and Southeast. Even had 100% integration credit been accorded Southeast, with the resultant improvement in Southeast's diversification posture, it would still be ruled that this would not be sufficient to overcome the strong preference to Metroplex for its meritorious broadcast record in the operation of Station WHYI during the relevant license period.

ACCORDINGLY, IT IS ORDERED that unless an appeal from this Initial Decision is taken by a party or the Commission reviews the Initial Decision on its own motion, in accordance with Section 1.276(d), 47 C.F.R. 1.276(d),[37] the application of Metroplex Commmunications, Inc., for renewal of license of Station WHYI, Ft. Lauderdale, Florida, IS GRANTED and the construction permit of Southeast Florida Broadcasting Limited Partnership IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas B. Fitzpatrick
Chief Administrative Law Judge

FOOTNOTES

[1] Metroplex's "Statement Re Integration Proposal and Renewal Expectancy" filed April 7, 1987, pp. 1-2; and "Amendment to Statement Re Integration Proposal and Renewal Expectancy" filed May 20, 1987, p. 1.

[2] It was station policy to require that non-entertainment programming be logged. (Southeast Ex. 9; Tr. 540-44, 550-51) For this reason, the findings are limited to the non-entertainment programming detailed herein.

[3] Other topics discussed on "Here's Help" included mass transportation, corruption in the police department, the deaf, sexually abused children, physical fitness, birth control, Russian immigrants, drunk driving, crisis intervention and runaways. (Metroplex Ex. 1, att. 29)

[4] Ross was uncertain as to when Siani assumed that position. A report filed with the FCC in December 1986 described her title as of November 15, 1986, as "Public Affairs/Entertainment Reporter." (Tr. 452-53) Metroplex indicated in a response to interrogatories that Siani devoted about 50 percent of her time to non-entertainment programming. (Tr. 501)

[5] Hersey had, however, been described as holding the title of news announcer as of November 15, 1986, in a report filed with the Commission. (Tr. 451-52)

[6] The frequency and duration of the PSAs are not established as specific evidence.

[7] WHYI logo appeared on everything the March of Dimes printed relative to the events, including 200,000 sponsor forms and 2,000 posters. (Tr. 3822-23)

[8] In order to avoid confusion with Lewis I. Cohen, the attorney, who is hereinafter referred to as Cohen, the principal in Southeast, Gerald B. Cohen, will be referred to by reference to his proper name.

[9] Butler made no independent inquiries about Southeast's principals. She did seek out Lee Dunham at a convention in early May 1986 to inquire about Cohen's character and reliability as an attorney, because "if I entered into this, I would be relying heavily and placing a lot of trust in this person." (Tr. 2025-26) She felt that Cohen "was the person I wanted to . . . be sure about." (Tr. 2027)

[10] Cohen's firm also paid or will pay for Butler's trip to Washington, D.C., to testify at the hearings out of the $200,000 in capital contributions made to the firm, as the "prosecution fund." Butler did not know who paid for the limited partners' trips to Washington, D.C., to testify, but assumed the payment was made by counsel from the "prosecution fund." (Tr. 2145)

[11] Butler initially recalled that she had requested that Baer be present and that he was. (Tr. 2078) She later corrected her testimony. (Tr. 2186- 88)

[12] Butler could not explain why the agreement requires the consent of counsel to such transfers. (Tr. 2251)

[13] Section 12(a) of the partnership agreement provides that any limited partner must first obtain the written consent of the General Partner and her counsel before the transfer of any portion of a limited partner's interest in the partnership. More

importantly, it further provides that such consent may be withheld "at the sole discretion of the General Partner." (Southeast Ex. 12, p. 8)

[14] Butler's initial understanding of this provision was the same as Perry's until she, too, was "corrected" by Southeast's counsel. (Tr. 1484-85, 2289-90)

[15] Butler did claim some "limited" knowledge of the salary for a sales manager based on her acquaintance with a sales manager with a local AM station with a format different from that she proposes. (Tr. 1507-09)

[16] *See* Southeast Ex. 3, att. 1, pp. 2-4: General Manager - $18,750; Executive Secretary - $4,000; Sec'y Recept/Bookkeeper - $2,700; Program Director - $12,500; Music Director - $10,000; News Director - $6,250; Public Affairs Director - $6,000; 2 News Announcers - $10,700; General Sales Manager - $9,000; Traffic Manager - $3,500; Assistant Traffic Manager - $3,250; 5 Account Executives - $20,795; Contract Engineer - $3,000. These figures total $110,445, which is approximately 46% of the total budget of $240,709.

[17] Hoover explained that the word "prohibitive" in his letter meant "economically unfeasible." The cost of duplicating the Gannett master antenna would be "sky high." (Tr. 3686) "The entire package is beyond consideration." (Tr. 3689)

[18] In December 1987, Butler maintained that she did not know what documents Diaz was given or instructed to review in connection with his assignment. Nor did she know whether he was made aware of the amount of Southeast's financing, whether he was given any ceiling on his estimates, or whether he consulted with Hoover. (Tr. 1530, 1901-05) When later asked to reconcile her receipt of Boyce's letter with her testimony that she was ignorant of what instructions were given to Diaz, Butler conceded that she received the letter shortly after September 21, 1987, but said that she did not recall it during her December 1987 testimony. She claimed that she "read the letter casually without giving it much thought and filed it with other papers." She "did not give any thought" to Boyce's instructions regarding what was available for operating costs, and did not discuss the letter or any limitations on Diaz's estimates with counsel or anyone else. (Joint Ex. 3)

[19] Butler had no explanation as to why she and Cohen omitted telephone transmission lines from the 1986 budget. (Tr. 2013-14)

[20] The playlist did not list "oldies," which were hits of the distant past, or "recurrents," which were hits of the recent past, even though such records were occasionally played. (Metroplex Ex. 3, ¶ 7; Joint Ex. 2, ¶ 3) Nor did it list "test" records, which were new, unestablished records whose prospective popularity the station sought to test by playing them in overnight hours and gauging listeners' responses. (Tr. 1286-87, 1290; Joint Ex. 2, ¶ 3)

[21] Southeast's counsel reported on the last day of the hearing that he had spoken to the hotel in an effort to clarify matters and, as a result, felt it was best to "just leave the record as it is." (Tr. 4397)

[22] Amadeo, during his deposition, defined a paper add as a record reported to the trade press that was not aired. (Tr. 1153-56, 1170-72) However, at the hearing, he explained that he had failed to state at his deposition that the record aired, but not in normal rotation. (Tr. 1156-57)

[23] "Cathy" and "Kathy Crews" presumably refer to Cathy Cruise, identified at Metroplex Ex. 90, p. 1.

[24] 47 C.F.R. 73.1212 was adopted by the Commission to carry out the statutory requirements of Section 317 of the Act, as amended. The discussion and resolution of this issue will concern itself solely with whether Metroplex violated the statutory provisions.

[25] Southeast's contention that David Ross' May 1, 1984, letter to the mother of the Jackson family evidences a willingness to use station programming as "a means of extracting favors from record industry sources" is rejected. Ross adequately explained that he was referring to assistance with concert tour arrangements in Florida, and not to promotion of Jackson records on Metroplex stations. (Tr. 844, 869-71)

[26] House Report No. 1800, 86th Congress, 2d Session, June 13, 1960 (*House Report*) ; Pike and Fisher Current Service, p. 10:413-10:432. *See* also *Sponsorship Identification*, 40 FCC 141, 144 25 RR 1575 (1963).

[27] The courts have held that an agency may not impose a different standard than that imposed by Congress. *Ernst & Ernst v. Hofelder*, 425 U.S. 185, 212-214 (1976).

[28] Southeast notes that Robert Walker and Frank Amadeo were members of the Music Committee and argues that the "inmates were running the asylum." However, there is no evidence that there was any unwarranted or excessive play of the records of any record companies.

[29] The Review Board has stressed that to permit the principal of an applicant to certify to the financial resources of "passive principals," based on nothing more than the "undocumented assurances" of such principals would result in negating the efficacy of the sworn certification requirement. *Religious Broadcasting Network*, 3 FCC Rcd 4085, at 4093 (Rev. Bd. 1988).

[30] The Presiding Judge agrees with Metroplex that, contrary to Butler's contention, *Armando Garcia*, 3 FCC Rcd 1065 (Rev. Bd. 1988), is distinguishable in that Garcia had made "srious and reasonable efforts . . . " to ascertain costs and the sufficiency of funds to finance the proposal.

[31] The Presiding Judge, *supra*, rejected the contentions of Metroplex and the Bureau that the $500,000 bonus to counsel should appropriately be considered as part of the estimated operating cost and, therefore, the argument that this cost item precludes finding Southeast financially qualified is rejected for the reasons articulated, *supra*.

[32] It should be noted that, to the best of the Presiding Judge's knowledge, this is the first decision in a renewal comparative proceeding to be issued where, as a result of the Commission's elimination in 1981 of quantitative programming guidelines, that data was not available. The Commission, since 1981, has not required licensees to submit quantitative programming data with the renewal application and, as a result, there was not readily available information as to how other stations in WHYI's market performed so as to permit a comparison of WHYI's performance quantitatively with such stations.

[33] The fact that many of the witnesses who testified on behalf of WHYI were representatives of charitable and civic groups in whose activities WHYI had been actively involved does not detract from the weight to be accorded their testimony. These individuals were in an excellent position to chronicle WHYI's contributions to community activities and, contrary to Southeast's contention, appropriately fulfill the role traditionally accorded public witnesses expressing their evaluation of a station's performance.

[34] *Attribution of Ownership Interest*, 97 FCC 2d 997 (1984), reconsidered, 58 RR 2d 604 (1985), further clarified, 1 FCC Rcd 802 (1986). *See Daytona Broadcasting Company, Inc.* 103 FCC 2d 931, 934-935 (1986) "(*attribution of ownership interest* policy applicable in comparative evaluations)".

[35] The Review Board, in the instant case, ruling on a discovery matter noted that, in general, the Commission regards ownership interests of less than 5 percent to be sufficiently insignificant as to be wholly noncognizable for attiribution purposes. *Memorandum Opinion and Order* (FCC 87-R37), released July 31, 1987.

[36] The Presiding Judge rejects Metroplex's claim that integration credit should not be awarded to Butler because she failed to commit to a specific managerial position in either the Integration Statement filed with the Presiding Judge or Southeast's direct written affirmative case. The Presiding Judge rules that both the Integration Statement and the Southeast exhibits made clear that Butler was to exercise a managerial role in the operation of the station. The Presiding Judge also rejects Metroplex's claim that Butler failed to demonstrate that she would terminate her duties with her family-owned McDonald's franchises and devote full time to Southeast. The record shows that Butler's duties with the McDonald's franchises can be assumed by another individual and that she has committed herself to the fulltime role of General Manager of the proposed station.

[37] In the event exceptions are not filed within 30 days after the release of this Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release, pursuant to 47 C.F.R. 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-182

In the Matter of

Automated Reporting Requirements
for Certain Class A and Tier 1
Telephone Companies (Parts 31,
43, 67, and 69 of the FCC's Rules)

ORDER

Adopted: December 16, 1988; Released: January 6, 1989

By the Chief, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. In an Order released on September 17, 1987,[1] in the above-captioned docket, the Commission established an automated system of reports for collecting financial and operating data from certain local exchange carriers (LECs).[2] On October 14, 1988, the Commission released the *ARMIS Reconsideration Order* which resolved the major substantive and procedural issues raised by the parties[3] and delegated to the Chief of the Common Carrier Bureau the authority to resolve the remaining issues. In this *Order*, we revise the USOA Report,[4] adopted as Appendix B in the *ARMIS Order*, to make certain technical changes including those delegated in the *ARMIS Reconsideration Order*.

2. In the *ARMIS Order*, the Commission adopted a quarterly report and three annual reports. The Quarterly Report (*ARMIS Order*, Appendix A) collects highly aggregated financial data reflecting the results of accounting and cost allocation requirements prescribed in Parts 32, 64, 36 and 69. This report also includes a demand analysis table. The three annual reports provide more detailed coverage. These are: the USOA Report (*ARMIS Order*, Appendix B) which shows the operating results of the carriers' total activities for every account in the Uniform System of Accounts (USOA), as specified in Part 32 of our Rules;[5] the Joint Cost Report (*ARMIS Order*, Appendix C) which shows the allocations to regulated and nonregulated activities, as required by Part 64, for those accounts that are involved in the ratemaking process; and the Access Report (*ARMIS Order*, Appendix D) which shows the results of the jurisdictional separations and access rules, by Part 36 category and Part 69 element.

3. In this Order, we make certain technical changes to the USOA Report. Many of these changes were brought to our attention by the commenting parties in the *ARMIS Reconsideration Order*. In addition, we conform the USOA Report with the Balance Sheet (Schedule 10) and Income Statement (Schedule 11) proposed for Annual Report Form M in a related proceeding.[6] Finally, we revise the USOA Report to include several accounts needed to accommodate those Class B carriers required to file ARMIS reports. As a result of these changes, the format of the report has been reorganized and several line items and columns have been moved or added.

II. ISSUES AND DISCUSSION

4. In the Petitions for Reconsideration, none of the parties opposes the content or format of the USOA Report. The parties do express concern, however, that the reporting requirements contained in FCC Form M and the USOA Report are redundant, and suggest that some of the Form M schedules be incorporated in ARMIS.

5. We share the commenting parties concern about the apparent duplication between the ARMIS USOA Report and Schedules 10 and 11 of proposed Form M. Therefore, in order to minimize the burden on reporting carriers and to avoid duplicative reporting, we modify the USOA Report so carriers may file the public version of a paper USOA Report as a substitute for Schedules 10 and 11 in their Form M filings. Specifically, we have added descriptive account detail found in Schedules 10 and 11 to the USOA Report. The following data have been added: (1) for the regulated plant accounts, the beginning balance, additions, retirements, transfers and adjustments, and the ending balance of each of these accounts; (2) for the retained earnings account, the beginning balance, net income, dividends declared, miscellaneous debits and credits, and ending balance of this account; and, (3) for the expense accounts, salaries and wages, benefits, rents, and other expenses, as required by §32.5999(f).[7]

6. In other technical amendments, we have, as suggested by USTA, added account 7991, Other nonregulated revenues, and corrected the account number for Central Office Equipment to read 6230. In addition, we have added nine Class B accounts to the USOA Report to accommodate those Class B carriers required to file this report. This addition will not increase reporting burden because these accounts must be maintained by all carriers for separations purposes and they are merely aggregations of the more detailed accounts prescribed for Class A companies.

7. Finally, at GTE's request we specify that the information required in the USOA Report is booked data.[8] We clarify that the USOA Report calls for reporting the end of period balance of each USOA account (booked data), thus maintaining consistency between the USOA Report and the total company data submitted in the Quarterly Report.

III. Paperwork Reduction Act

8. The proposal contained herein is in compliance with the Paperwork Reduction Act of 1980 and imposes no substantive or material modification to the approved information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed in the Act.

IV. ORDERING CLAUSE

9. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 201-205, 215, 219, and 220 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201-205, 215, 218, 219, and 220, that the form attached hereto IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67 and 69 of the FCC's Rules), 2 FCC Rcd 6283 (1987) (*ARMIS Order*), *modified on recon.*, 3 FCC Rcd 6375 (1988) (*ARMIS Reconsideration*).

[2] All LECs having revenues of $100 million or more per calendar year are required to file pursuant to the *ARMIS Order*.

[3] Petitions for reconsideration were filed by the Bell Atlantic Telephone Companies (Bell Atlantic); South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, and BellSouth Corporation (BellSouth); Contel Corporation (Contel); GTE Service Corporation (GTE); The Pacific Companies (Pacific Bell); Southwestern Bell Telephone Company (Southwestern Bell); The United States Telephone Association (USTA); United Telecommunications, Inc. (UTS); and Western Union. Oppositions were filed by Bell Atlantic, The New England Telephone and Telegraph Company and the New York Telephone Company (NYNEX), Pacific Bell and Western Union. Replies were filed by Bell Atlantic, BellSouth, USTA, UTS and Western Union.

[4] We make these changes under the authority granted in Section 0.291(b)(4) of the Commission's Rules which delegates authority to the Common Carrier Bureau to approve or prescribe the specific data to be entered on and the computer format and media for, common carrier reports filed pursuant to Part 43 of the FCC's Rules.

[5] In the Report and Order in CC Docket 78-196, released May 15, 1986, the Commission adopted a new Uniform System of Accounts (USOA) which established financial accounts on a functional basis for Class A and Class B telephone companies. *See Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone Companies (Parts 31, 33, 42 and 43 of the FCC's Rules*, 51 FR 24745, July 8, 1986 and 51 FR 43493, December 2, 1986; *modified on recon.*, 2 FCC Rcd 1086(1987), *modified on further recon.*, 2 FCC Rcd 6555 (1987).

[6] *Revision of Annual Report Form M, (Order Inviting Comments), DA 88-1218, released September 9, 1988.*

[7] 47 C.F.R. Section 32.5999(f).

[8] GTE Comments at 5.

APPENDIX

This document provides the instructions for FCC Report 43-02, the ARMIS USOA Report, which was adopted by the Commission in CC Docket No. 86-182. The instructions consist of the following five sections, which are attached:

1. Reporting Procedures - details on the specific procedures to be followed when submitting this report to the Commission.

2. Report Definition - an illustration of the rows and columns to be reported and their definitions.

3. Automated Report Specifications - the detailed automated data processing (ADP) specifications for the automated report to be filed.

4. Paper Report Specifications - the page layout and detailed specifications for the paper report to be filed.

5. COSA Code Table - the list of four letter COSA codes (CO = Company, SA = Study Area).

Approved by OMB
3060-0395
Expires 10/31/90
Estimated Average Burden Hours Per Response: 115 hours

SUMMARY

This document provides the Report Definition for FCC Report 43-02, the ARMIS USOA Report, and lists the company level USOA data which must be provided annually. It contains the following:

	Pages
Table I - Balance Sheet Accounts	2 thru 4
Table II - Income Statement Accounts	5 thru 8
Row and Column Descriptions	9 thru 14
Certification	15

All amounts must be rounded to the nearest thousand dollars.

Items which need not be reported because they do not apply are designated by N/A. All other fields must be populated. If there are no data applicable to a given field, enter zero.

Do not include explanatory notes in the transmittal letter; such notes must be included in the Footnotes section of the filing.

NOTICE: The ARMIS USOA Report collects the operating results of the carriers' total activities for every account in the USOA, as specified in Part 32 of the Commission's Rules. The ARMIS USOA Report specifies information requirements in a consistent format and is essential to the FCC to monitor revenue requirements, rate of return, jurisdictional separations and access charges. Your response is mandatory.

Public reporting burden for this collection of information is estimated to average 115 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Federal Communications Commission, Office of Managing Director, Washington DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx

TABLE I - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row Account Number	Account Title	Amount
	(a)	(b)
	Current Assets	
1130	Cash	
1140	Special cash deposits	
1150	Working cash advances	
1160	Temporary investments	
1120	Cash and equivalents	
1180	Telecommunications accounts receivable	
1181	Accounts receivable allowance-telecommunications	
1190	Other accounts receivable	
1191	Accounts receivable allowance-other	
1200	Notes receivable	
1201	Notes receivable allowance	
1210	Interest and dividends receivable	
1220	Material and supplies	
120	Total Noncash current (excluding prepayments)	
1290	Prepaid rents	
1300	Prepaid taxes	
1310	Prepaid insurance	
1320	Prepaid directory expenses	
1330	Other prepayments	
1280	Prepayments	
1350	Other Current Assets	
130	Total Current Assets	
	Noncurrent Assets	
1401	Investments in affiliated companies	
1402	Investments in nonaffiliated companies	
1406	Nonregulated investments	
1407	Unamortized debt issuance expense	
1408	Sinking funds	
1410	Other noncurrent assets	
1438	Deferred maintenance and retirements	
1439	Deferred charges	
1500	Other jurisdictional assets-net	
150	Total Noncurrent Assets	

FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx

TABLE I - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title (aa)	Beginning Balance (ab)	Additions (ac)	Retirements (ad)	Transfers/ Adjustments (ae)	Ending Balance (af)
	Regulated Plant					
2001	TPIS					
2002	PHPTU					
2003	TPUC-short term					
2004	TPUC-long term					
2005	Telecom plant adjstmnt					
2006	Nonoperating plant					
2007	Goodwill					
210	Total Reg. Plant					
	TPIS - General Support					
2111	Land					
2112	Motor vehicles					
2113	Aircraft					
2114	Special purpose vehic					
2115	Garage work equipment					
2116	Other work equipment					
2121	Buildings					
2122	Furniture					
2123	Office Equipment					
2124	Gen purpose computers					
2110	Land & Support					
	TPIS - Central Office					
2211	Analog elec switch					
2212	Digit elec switch					
2215.1	Step-by-step switching					
2215.2	Crossbar switching					
2215.3	Other elec-mechan sw					
2215	Electro-mechan sw					
2210	Gen Office-Sw					
2220	Operator sys					
2231.1	Satellite & earth sta					
2231.2	Other radio facilities					
2231	Radio systems					
2232	Circuit equipment					
2230	Transmission					
	TPIS - IOT					
2311	Station apparatus					
2321	Customer premise wire					
2341	Large PBX					
2351	Publ tel trmnal equip					
2362	Other terminal equip					
2310	IOT					
	TPIS - Cable & Wire					
2411	Poles					
2421	Aerial cable					
2422	Underground cable					
2423	Buried cable					
2424	Submarine cable					
2425	Deep sea cable					
2426	Intrabldg network cble					
2431	Aerial wire					
2441	Conduit systems					
2410	Cable & Wire					
	TPIS - Amortiz Assets					
2681	Capital Leases					
2682	Leasehold improvements					
2680	Amort Tangible					
2690	Intangibles					
260	Total TPIS					

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STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx

TABLE I - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title (ba)	Amount (bb)
	Depreciation and Amortization	
3100	Accumulated depreciation	
3200	Accumulated depreciation - PHFTU	
3300	Accumulated depreciation - Nonoperating	
3410	Accumulated amortization - Capitalized leases	
3420	Accumulated amortization - Leasehold improvements	
3400	Accumulated amortization - Tangible	
3500	Accumulated amortization - Intangible	
3600	Accumulated amortization - Other	
340	Total Depreciation and Amortization	
350	Net Plant	
360	Total Assets	
	Current Liabilities	
4010	Accounts Payable	
4020	Notes payable	
4030	Advanced billing and payments	
4040	Customer's deposits	
4050	Current maturities - long-term	
4060	Current maturities - capital leases	
4070	Income taxes - accrued	
4080	Other taxes - accrued	
4100	Net current deferred operating income taxes	
4110	Net current deferred nonoperating income taxes	
4120	Other accrued liabilities	
4130	Other current liabilities	
410	Total Current Liabilities	
	Long-Term Debt	
4210	Funded debt	
4220	Premium on long-term debt	
4230	Discount on long-term debt	
4240	Reacquired debt	
4250	Obligations under capital leases	
4260	Advances from affiliated companies	
4270	Other long-term debt	
420	Total Long-Term Debt	
	Other Liabilities and Deferred Credits	
4310	Other long-term liabilities	
4320	Unamortized operating investment tax credits - net	
4330	Unamortized nonoperating investment tax crs - net	
4340	Net noncurrent deferred operating income taxes	
4350	Net noncurrent deferred nonoperating income taxes	
4360	Other deferred credits	
4370	Other jurisdictional liabilities/deferred crs - net	
430	Total Other Liabilities and Deferred Credits	
	Stockholders' Equity	
4510	Capital stock	
4520	Additional paid-in capital	
4530	Treasury stock	
4540	Other Capital	
4550	Retained earnings	
440	Total Stockholders' Equity	
450	Total Liabilities & Stockholders' Equity	
460	Retained Earnings (Beginning of Year)	
465	Net Income	
470	Dividends Declared	
475	Miscellaneous Debits	
480	Miscellaneous Credits	
490	Retained Earnings (End of Year)	

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From xxx YYYY To xxx YYYY TABLE II
COSA: xxxx

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title (a)	Amount (b)
	REVENUE ACCOUNTS	
	Local Network Service Revenues	
5001	Basic area revenue	
5002	Optional extended area revenue	
5003	Cellular mobile service revenue	
5004	Other mobile service revenue	
510	Basic local service rev (Class A Account 5000)	
5010	Public telephone revenue	
5040	Local private line revenue	
5050	Customer premises revenue	
5060	Other local exchange revenue	
5069	Other local exchange revenue settlements	
520	Basic local service revenue	
	Network Access Services Revenues	
5081	End user revenue	
5082	Switched access revenue	
5083	Special access revenue	
5084	State access revenue	
5080	Network access revenue	
	Long Distance (LD) Network Services Revenues	
5111	LD inward-only revenue	
5112	LD outward-only revenue	
5110	Unidirectional LD Revenue	
5121	Subvoice grade LD private network revenue	
5122	Voice grade LD private network revenue	
5123	Audio program grade LD private network revenue	
5124	Video program grade LD private network revenue	
5125	Digital transmission LD private network revenue	
5126	LD private network switching revenue	
5128	Other LD private network revenue	
5129	Other LD private network revenue settlements	
5120	Long distance private network revenue	
5160	Other long distance revenue	
5169	Other long distance revenue settlements	
5100	Long Distance Message Revenue	
	Miscellaneous Revenues	
5230	Directory revenue	
5240	Rent revenue	
5250	Corporate operations revenue	
5261	Special billing arrangements revenue	
5262	Customer operations revenue	
5263	Plant operations revenue	
5264	Other incidental regulated revenue	
5269	Other revenue settlements	
5260	Miscellaneous revenues (Class A)	
5270	Carrier billing and collection revenue	
5280	Other nonregulated revenue	
5200	Miscellaneous revenues	
	Uncollectible Revenues	
5301	Uncollectible revenue-telecommunications	
5302	Uncollectible revenue-other	
5300	Uncollectible revenue	
530	Total Operating Revenues	

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title (aa)	Total (ab)	Salaries and Wages (ac)	Benefits (ad)	Rents (ae)	Other Expenses (af)
	EXPENSE ACCOUNTS					
	Plant Specific Ops					
6112	Motor vehicle					
610	Clearance - MV					
615	Net Balance - MV					
6113	Aircraft					
620	Clearance - Aircr					
625	Net Balance - Aircr					
6114	Special purpose vehicle					
630	Clearance - SPV					
635	Net Balance - SPV					
6115	Garage work equipment					
6116	Other work equipment					
640	Clearance - OWE					
645	Net Balance - OWE					
6110	Network support					
6121	Land & building					
6122	Furniture & artworks					
6123	Office equipment					
6124	Gen purpose computers					
6120	General support					
6211	Analog electronic					
6212	Digital electronic					
6215	Electro-mechanical					
6210	Cntrl Office Sw					
6220	Operator systems					
6231	Radio systems					
6232	Circuit equipment					
6230	Cntrl office Tr					
6311	Station apparatus					
6341	Large PBX					
6351	Public tel term equip					
6362	Other terminal equip					
6310	IOT expense					
6411	Poles					
6421	Aerial cable					
6422	Underground cable					
6423	Buried cable					
6424	Submarine cable					
6425	Deep sea cable					
6426	Intrabldg network cable					
6431	Aerial wire					
6441	Conduit Systems					
6410	Cable & Wire					
650	Total Plant Spc					
	Plant Nonspecific Ops					
6511	PMFTU					
6512	Provisioning					
660	Clearance - Prov					
665	Net Balance - Prov					
6510	Other PP&E Exp					
6531	Power					
6532	Network administration					
6533	Testing					
6534	Plant ops admin					
670	Clearance - POA					
675	Net Balance - POA					
6535	Engineering					
680	Clearance - Eng					
685	Net Balance - Eng					
6530	Network Ops					
6540	Access				N/A	
6561	Depreciation-TPIS		N/A	N/A	N/A	N/A
6562	Depreciation-PMFTU		N/A	N/A	N/A	N/A
6563	Amortization-tangible		N/A	N/A	N/A	N/A
6564	Amortization-intangible		N/A	N/A	N/A	N/A
6565	Amortization-other		N/A	N/A	N/A	N/A
6560	Dep & Amort Exp		N/A	N/A	N/A	N/A
690	Total Plant Non					

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE II

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Total	Salaries and Wages	Benefits	Rents	Other Expenses
	(aa)	(ab)	(ac)	(ad)	(ae)	(af)
	Customer Operations					
6611	Product management				N/A	
6612	Sales				N/A	
6613	Product Advertising				N/A	
6610	Marketing Expense				N/A	
6621	Call Completion				N/A	
6622	Number Services				N/A	
6623	Customer Services				N/A	
6620	Services Expense				N/A	
700	Total Cust Ops				N/A	
	Corporate Operations					
6711	Executive				N/A	
6712	Planning				N/A	
6710	Exec & Planning				N/A	
6721	Accounting & finance				N/A	
6722	External relations				N/A	
6723	Human resources				N/A	
6724	Information management				N/A	
6725	Legal				N/A	
6726	Procurement				N/A	
6727	Research & development				N/A	
6728	Other general & admin				N/A	
6720	General & Admin				N/A	
6790	Provis uncollect notes		N/A	N/A	N/A	N/A
710	Total Corp Ops				N/A	
720	Total Ops Exp					
730	Net Ops Rev					

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title (ba)	Amount (bb)
	Other Operating Income and Expense	
7110	Income from custom work	
7130	Return from nonreg use of regulated facilities	
7140	Gains/losses from foreign exchange	
7150	Gains/losses from disposition of land & artworks	
7160	Other operating gains and losses	
7100	Other operating income and expenses	
	Operating Taxes	
7210	Operating investment tax credits-net	
7220	Operating federal income taxes	
7230	Operating state and local income taxes	
7240	Operating other taxes	
7250	Provision for deferred operating income tax-net	
7200	Operating Taxes	
	Nonoperating Income and Expense	
7310	Dividend income	
7320	Interest income	
7330	Income from sinking and other funds	
7340	Allowance for funds used during construction(AFUDC)	
7350	Gains/losses from the disposition of property	
7360	Other nonoperating income	
7370	Special charges	
7300	Nonoperating Income and Expense	
	Nonoperating Taxes	
7410	Nonoperating investment tax credits-net	
7420	Nonoperating federal income taxes	
7430	Nonoperating state and local income taxes	
7440	Nonoperating other taxes	
7450	Provision for deferred nonoperating income tax-net	
7400	Nonoperating Taxes	
	Interest and Related Items	
7510	Interest on funded debt	
7520	Interest expense-capital leases	
7530	Amortization of debt issuance expense	
7540	Other interest deductions	
7500	Interest and Related Items	
	Extraordinary Items	
7610	Extraordinary income credits	
7620	Extraordinary income charges	
7630	Current inc tax effect of extraordinary items-net	
7640	Provision for deferred inc tax effect of items-net	
7600	Extraordinary Items	
	Jurisdictional Differences & Nonregulated Income	
7910	Income effects of jurisdictional differences-net	
7990	Nonregulated net income	
790	Net Income	

ROW INSTRUCTIONS
TABLE I - BALANCE SHEET ACCOUNTS

1120. Cash and Equivalents - For Class A companies this amount equals the total of Row/Account 1130 through 1160. For Class B companies this amount equals the balance of account 1120.

120. Total Noncash current (excluding prepayments) - This amount equals the total of Row/Account 1180 through 1220.

1280. Prepayments - For Class A companies this amount equals the total of Row/Account 1290 through 1330. For Class B companies this amount equals the balance of account 1280.

130. Total Current Assets - This amount equals the total of Row/Account 1120, 120, 1280 and 1350.

150. Total Noncurrent Assets - This amount equals the total of Row/Account 1401 through 1500.

210. Total Regulated Plant - This amount equals the total of Row/Account 2001 through 2007.

2110. Land and Support - For Class A companies this amount equals the total of Row/Account 2111 through 2124. For Class B companies this amount equals the balance of account 2110.

2215. Electro-mechanical Switching - This amount equals the total of Row/Account 2215.1 through 2215.3.

2210. Central Office - Switching - For Class A companies this amount equals the total of Row/Account 2211, 2212 and 2215. For Class B companies this amount equals the balance of account 2210.

2231. Radio Systems - This amount equals the total of Row/Account 2231.1 and 2231.2.

2230. Transmission - For Class A companies this amount equals the total of Row/Account 2231 and 2232. For Class B companies this amount equals the balance of account 2230.

2310. Information Origination/Termination - For Class A companies this amount equals the total of Row/Account 2311 through 2361. For Class B companies this amount equals the balance of account 2310.

2410. Cable and Wire Facilities - For Class A companies this amount equals the total of Row/Account 2411 through 2441. For Class B companies this amount equals the balance of account 2310.

2680. Amortizable Tangible Assets - For Class A companies this amount equals the total of Row/Account 2681 and 2682. For Class B companies this amount equals the balance of account 2680.

260. Total Telecommunications Plant-in-Service - This amount equals the total of Row/Account 2110, 2210, 2220, 2230, 2310, 2410, 2680 and 2690.

3400. Accumulated Amortization-Tangible - For Class A companies this amount equals the total of Row/Account 3410 and 3420. For Class B companies this amount equals the balance of account 3400.

340. Total Depreciation and Amortization - This amount equals the total of Row/Account 3100, 3200, 3300, 3400, 3500 and 3600.

350. Net Plant - This amount equals the total of Row/Account 210 and 260 less 340.

360. Total Assets - This amount equals the total of Row/Account 130, 150, and 350.

410. Total Current Liabilities - This amount equals the total of Row/Account 4010 through 4130.

420. Total Long Term Debt - This amount equals the total of Row/Account 4210 through 4270.

430. Total Other Liabilities and Deferred Credits - This amount equals the total of Row/Account 4310 through 4370.

440. Total Stockholders' Equity - This amount equals the total of Row/Account 4510 through 4550.

450. Total Liabilities and Stockholders' Equity - This amount equals the total of Row/Account 410, 420, 430 and 440.

490. Retained Earnings (End of Year) - This amount equals the net amount of Row/Account 460 through 480.

TABLE II - INCOME STATEMENT ACCOUNTS

510. Basic Local Service Revenue - For Class A companies this amount equals the total of Row/Account 5001 through 5004 (the balance of account 5000 for Class A companies).

520. Basic Local Service Revenue - For Class A companies this amount equals the total of Row/Account 510, 5010, 5040, 5050, 5060, and 5069. For Class B companies this amount equals the balance of account 5000.

5080. Network Access Revenue - This amount equals the total of Row/Account 5081 through 5084.

5110. Unidirectional Long Distance Revenue - For Class A companies this amount equals the total of Row/Account 5111 and 5112.

5120. Long Distance Private Network Revenue - For Class A companies this amount equals the total of Row/Account 5121 through 5129.

5100. Long Distance Message Revenue - For Class A companies this amount equals the total of Row/Account 5110, 5120, 5160 and 5169. For Class B companies this amount equals the balance of account 5100.

5260. Miscellaneous Revenue (Class A Companies Only) - This amount equals the total of Row/Account 5261 through 5269.

5200. Miscellaneous Revenue - For Class A companies this amount equals the total of Row/Account 5230, 5240, 5250, 5260, 5270 and 5280. For Class B companies this amount equals the balance of account 5200.

5300. Uncollectible Revenue - For Class A companies this amount equals the total of Row/Account 5301 and 5302. For Class B companies this amount equals the balance of account 5300.

530. Total Operating Revenues - This amount equals the total of Row/Account 520, 5080, 5100, 5200 and 5300.

615. Net Balance-MV - For Class A companies this amount equals the net of Row/Account 6112 and 610.

625. Net Balance-Aircraft - For Class A companies this amount equals the net of Row/Account 6113 and 620.

635. Net Balance-SPV - For Class A companies this amount equals the net of Row/Account 6114 and 630.

645. Net Balance-OWE - For Class A companies this amount equals the net of Row/Account 6116 and 640.

6110. Network Support - For Class A companies this amount equals the total of Row/Account 615, 625, 635, 6115 and 645. For Class B companies this amount equals the balance of account 6110.

6120. General Support - For Class A companies this amount equals the total of Row/Account 6121 through 6124. For Class B companies this amount equals the balance of account 6120.

6210. Central Office-Switching - For Class A companies this amount equals the total of Row/Account 6211 through 6215. For Class B companies this amount equals the balance of account 6210.

6230. Central Office Transmission - For Class A companies this amount equals the total of Row/Account 6231 and 6232. For Class B companies this amount equals the balance of account 6230.

6310. Information Origination/Termination - For Class A companies this amount equals the total of Row/Account 6311 through 6362. For Class B companies this amount equals the balance of account 6310.

6410. Cable and Wire Facilities - For Class A companies this amount equals the total of Row/Account 6411 through 6441. For Class B companies this amount equals the balance of account 6410.

650. Total Plant Specific Operating Expenses - This amount equals the total of Row/Account 6110, 6120, 6210, 6220, 6230, 6310 and 6410.

665. Net Balance-Prov - For Class A companies this amount equals the net of Row/Account 6512 and 660.

6510. Other Property Plant and Equipment - For Class A companies this amount equals the total of Row/Account 6511 and 665. For Class B companies this amount equals the balance of account 6510.

675. Net Balance-POA - For Class A companies this amount equals the net of Row/Account 6534 and 670.

685. Net Balance-Eng - For Class A companies this amount equals the net of Row/Account 6535 and 680.

6530. Network Operations - For Class A companies this amount equals the total of Row/Account 6531, 6532, 6533, 675, and 685. For Class B companies this amount equals the balance of account 6530.

6560. Depreciation and Amortization - For Class A companies this amount equals the total of Row/Account 6561 through 6565. For Class B companies this amount equals the balance of account 6560.

690. Total Plant Non-Specific Expenses - This amount equals the total of Row/Account 6510, 6530, 6540 and 6560.

6610. Customer Operations-Marketing - For Class A companies this amount equals the total of Row/Account 6611 through 6613. For Class B companies this amount equals the balance of account 6610.

6620. Customer Operations-Services - For Class A companies this amount equals the total of Row/Account 6621 through 6623. For Class B companies this amount equals the balance of account 6620.

700. Total Customer Operations - This amount equals the total of Row/Account 6610 and 6620.

6710. Executive and Planning - For Class A companies this amount equals the total of Row/Account 6711 and 6712. For Class B companies this amount equals the balance of account 6710.

6720. General and Administrative - For Class A companies this amount equals the total of Row/Account 6721 through 6728. For Class B companies this amount equals the balance of account 6720.

710. Total Corporate Operations - This amount equals the total of Row/Account 6710, 6720 and 6790.

720. Total Operating Expenses - This amount equals the total of Row/Account 650, 690, 700 and 710.

730. Net Operating Revenue - This amount equals the net of Row/Account 530 and 720.

7100. Other Operating Income and Expenses - For Class A companies this amount equals the total of Row/Account 7110 through 7160. For Class B companies this amount equals the balance of account 7100.

7200. Operating Taxes - For Class A companies this amount equals the total of Row/Account 7210 through 7250. For Class B companies this amount equals the balance of account 7200.

7300. Nonoperating Income and Expense - For Class A companies this amount equals the total of Row/Account 7310 through 7370. For Class B companies this amount equals the balance of account 7300.

7400. Nonoperating Taxes - For Class A companies this amount equals the total of Row/Account 7410 through 7450. For Class B companies this amount equals the balance of account 7400.

7500. Interest and Related Items - For Class A companies this amount equals the total of Row/Account 7510 through 7540. For Class B companies this amount equals the balance of account 7500.

7600. Extraordinary Items - For Class A companies this amount equals the total of Row/Account 7610 through 7640. For Class B companies this amount equals the balance of account 7600.

790. Net Income - This amount equals the net of Row/Account 730, 7100, 7200, 7300, 7400, 7500, 7600, 7910 and 7990.

COLUMN INSTRUCTIONS

TABLE I - BALANCE SHEET ACCOUNTS

1. On page 2, respondents shall enter in column (b), the ending account balances for the accounts identified in column (a) for the reporting period.

2. On page 3, respondents shall enter for each account identified in column (aa): in column (ab) the balance recorded in that account at the beginning of the reporting period; in column (ac) the dollar amount representing plant added during the reporting period; in column (ad) the dollar amount representing plant retired during the reporting period; and, in column (af) the account balance at the end of the reporting period.

3. On page 4, respondents shall enter in column (bb), the ending balances for the accounts identified in column (ba) for the reporting period.

TABLE II - INCOME STATEMENT ACCOUNTS

1. On page 5, respondents shall enter in column (b), the dollar amount recorded in each of the accounts identified in column (a) for the reporting period.

2. On pages 6 and 7, respondents shall enter in column (ab) the ending account balances for the accounts identified in column (aa). In columns (ac) through (af) respondents shall enter the dollar amounts representative of the matrix required by 47 C.F.R. Section 32.5999(f) for salaries and wages, benefits, rents, and other expenses. Each matrix element amount reported for accounts 6112 through 6116 (excluding account 6115), and accounts 6512, 6534, and 6535 shall be reduced by amounts cleared from those accounts. These amounts shall be reported as specified in the row instructions. The net balance for these accounts shall also be reported as specified in the row instructions.

3. On page 8, respondents shall enter in column (bb) the dollar amount recorded in each of the accounts identified in column (ba) for the reporting period.

CERTIFICATION

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____..

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

A. Introduction

This document contains details on the specific procedures to be followed when submitting FCC Report 43-02, the ARMIS USOA Report, to the Commission.

B. General Information

1. FCC Report 43-02 was adopted by the Commission in the ARMIS Order, Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), CC Docket No. 86-182, 2 FCC Rcd 5770 (1987). The report is prescribed for every local exchange carrier with operating revenues in excess of $100 million.

2. Affected carriers carrier shall file by April 1 of each year the report for the previous calendar year. The inital report will be filed by April 1, 1989 and will contain data for the calendar year 1988.

3. The report shall be filed on an operating company basis.

4. Carriers seeking proprietary treatment for some data must provide two versions of each paper and automated report. The Confidential Version must contain all the required information (Confidential Treatment Tables/Data Records are provided to identify confidential data). The Public Version should not include data for which the carrier is seeking proprietary treatment. The carrier should **prominently** label the paper report and the diskette containing information subject to a claim of confidentiality to prevent inadvertent disclosure.

5. Carriers not seeking proprietary treatment for any data should provide only one version of each paper report and diskette, and the paper report and the diskette should be labeled the Unrestricted Version.

6. The Confidential Treatment Tables/Data Records are to be included in all reports but are not a substitute for applying for confidential treatment with this Commission following established Commission procedures.

7. Each report and diskette must be clearly labeled to include the report number, company, study area, period, COSA code, version and submission number. The report number is 43-02, which identifies the filing as the ARMIS USOA Report. The period identifies the year covered by the report. See the attached COSA Code Table (CO = Company, SA = Study Area) for a list of companies and their respective COSAs. The version refers to whether the filing is the Confidential, Public or Unrestricted Version. The submission number is defined as follows: Submission 0 is for test data purposes only. Submission 1 is the first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission.

8. All correspondence and pleadings shall identify the proceeding as CC Docket 86-182.

C. **Data Items That Are "Not Available" or Are "Withheld"**

1. The term "Not Available" is used below to refer only to those items which the Commission has ruled are not applicable to a particular row/column or are not required for a particular filing entity. The Confidential Version must contain values for all of the data items except those items which are "Not Available." If, in addition to the required operating company reports, a carrier submits a report which combines data for more than one operating company, and this report includes a field such as a sum, a ratio, or a percentage that cannot be computed completely and accurately because it relies on another item which the Commission has ruled is a "Not Available" item, then that field is also considered to be "Not Available."

2. The term "Withheld" is used below to refer only to those items for which the carrier has applied for confidential treatment with the Commission and is only applicable to the Public Version. If a field such as a sum, a ratio or a percentage relies on an item or items which have been withheld and that field is not also withheld, then it must include the withheld amount. For example, a carrier could withhold the individual values for two of three numbers which are totaled. If the carrier does not also apply for confidential treatment for the total, then that total must be the sum of all three numbers, not just the one which was not withheld. The Public Version must contain values for all of the data items except those items which are "Not Available" or those items which have been "Withheld."

3. See paragraph C.5 in the attached Automated Report Specifications and paragraph C.2 in the attached Paper Report Specifications for data entry conventions for these items.

D. **Where to File**

1. Carriers submitting FCC Report 43-02 should consult the schedule below which details the number of copies required and the location to which those copies should be delivered.

2. Carriers are reminded that they must serve a copy of either the Unrestricted Version or the Public Version of both the paper report and the automated report (diskette) on the FCC's contractor for public records duplication, International Transcription Services, Inc., (ITS). These copies should be mailed to the attention of Wilbur Thomas of ITS at Suite 140, 2100 M Street, N.W., Washington, D.C. 20037 or delivered to ITS in Room 246 at FCC Headquarters, 1919 M Street, N.W., Washington, D.C. 20036.

NUMBER OF COPIES

FOR CARRIERS SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Confidential Paper Report	Confidential Automated Report (diskette)	Public Paper Report	Public Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-	-	-
FCC Common Carrier Bureau Accounting & Audits Division 2000 L Street, N.W. Washington, D.C. 20554	1	1	1	1	1
ITS - Room 246 ATTN: Wilbur Thomas 1919 M Street, N.W. Washington, D.C. 20036	1	-	-	1	1

FOR CARRIERS NOT SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Unrestricted Paper Report	Unrestricted Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-
FCC Common Carrier Bureau Accounting & Audits Division 2000 L Street, N.W. Washington, D.C. 20554	1	1	1
ITS - Room 246 ATTN: Wilbur Thomas 1919 M Street, N.W. Washington, D.C. 20036	1	1	1

E. **Footnotes**

1. If any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances not explained in a previous report, then include footnote text to explain the occasioning facts.

2. This footnote text must be included in the Footnote Text Records and the Footnote Table as specified in the attached Automated Report Specifications and the attached Paper Report Specifications.

F. **Errata**

1. Carriers are under a legal obligation to correct any erroneous data discovered in FCC Report 43-02. Submissions containing corrected data must include references to indicate which data items were corrected since the previous submission.

2. These references must be included in the Erratum Records and the Erratum Table as specified in the attached Automated Report Specifications and the attached Paper Report Specifications.

G. **Certification**

1. Carriers must certify the accuracy of the data submitted in FCC Report 43-02 by including a signed certification statement as the last page of the paper report.

2. The text of the certification statement is included on page 23 of the attached Paper Report Specifications.

H. **Waivers**

1. If a carrier determines that it will be unable to provide data required by FCC Report 43-02, it must file an application for waiver with the Commission following established Commission procedures. All such requests from a carrier should be included in a single application. The application must demonstrate good cause for reporting a different or lower level of detail and indicate how these deficiencies will be corrected.

2. Carriers are strongly encouraged to comply with the requirements. Omission of individual data items or entries, without request for waiver, is unacceptable. One reason that compliance with the full requirements is so important is that omission of any single data entry by any carrier will jeopardize the accuracy of aggregate industry information.

I. Public Information

1. The Public or Unrestricted Versions of the paper reports filed as Report 43-02 may be examined by the public from 9:00 to 11:00 a.m. and from 2:00 to 4:00 p.m., Monday through Friday, in Room 812, 2000 L Street, N.W., Washington, D.C.

2. Copies of the Public or Unrestricted Versions of the paper or automated reports filed as FCC Report 43-02 may be obtained from the FCC's contractor for public records duplication, ITS. Parties should contact Wilbur Thomas of ITS at (202) 857-3800.

For further information regarding these procedures, contact:

Adrianne Brent
FCC Common Carrier Bureau
Accounting & Audits Division
(202) 634-1861

A. Introduction

This document contains the detailed automated data processing (ADP) specifications for the automated report to be filed as FCC Report 43-02, the ARMIS USOA Report.

B. General Format and Media

1. All data should be submitted on 5.25-inch double-sided double-density IBM-PC compatible diskettes.

2. All files should be coded in ASCII.

3. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

4. The file name for each file has six components:

    a. the four letter COSA code (CO = Company, SA = Study Area, see attached COSA Code Table for a list of companies and their respective COSAs).
    b. the last two digits of the year which is covered by the data.
    c. the letters "US".
    d. a decimal point.
    e. the letter "P", "C", or "U" to indicate whether this is the Public version, the Confidential version, or the only (Unrestricted) version since all data is non-confidential.
    f. two digits (zero filled) for the submission number. Submission 0 is for test data purposes only. Submission 1 is for the first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission.

    For example, the file name for the Confidential Version of the initial USOA Report data file to be submitted by Illinois Bell to cover the calendar year 1988, would be LBIL88US.C01:

LBIL	COSA for Illinois Bell
88	Data for calendar year 1988
US	USOA Report data file
.	decimal point
C	Confidential version
01	First submission of this year's data

5. A separate file should be prepared for each report. More than one file can be placed on the same diskette, as long as they cover the same period, version, and submission number.

C. Data Entry Conventions

1. Standard accounting procedures will apply in determining the nature of any entry (e.g., each Uncollectible Revenue item, a debit entry, shall be entered as a "positive" number unless the balance therein reported is a credit). Entries of a reverse or contrary character shall be indicated by the placing of a minus sign in the column immediately preceding the numeric data, e.g., use -4, NOT - 4 or (4).

2. Begin each data record in column 1 and make each record the proper length as specified in the accompanying record layouts. Commas are used as delimiters between fields. All numeric fields are right justified and space filled, e.g. use ___123, NOT 123___. All non-numeric fields are enclosed in double quotation marks and are left justified and space filled within these quotation marks, e.g. use "John Doe ___".

3. Give each record a unique record number, beginning with 1001 and incrementing by one, with no numbers skipped.

4. Do NOT include "$" or "%" or embedded commas or decimal points in any numeric data fields, except for row number fields, which will include a decimal point and one decimal place.

5. In any numeric data field for which data is "Not Available", enter -99999. On the "Public Version" diskette in any numeric data field for which the data is "Withheld", enter -88888.

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all monetary figures must be rounded to the nearest thousand dollars.

E. Data Record Descriptions

The nine data record types are described below. See pages 5 through 18 for record layouts. The file will consist of one Type H1 record, followed by one Type L1 record, followed by 32 Type B1 records, followed by 53 Type P1 records, followed by 53 Type B1 records, followed by 47 Type B1 records, followed by 91 Type X1 records, followed by 39 Type B1 records, followed by one or more Type C3 records, followed by zero or more Type F2 records, followed by zero or more Type E3 records, followed by one Type T1 record.

Record Type H1	Header Record	One Type H1 record per file. The first record of each file. Contains identifying data. See page 5 for record layout.
Record Type L1	Label Record	One Type L1 record per file. The second record of each file. Contains report number, carrier name, etc. See page 6 for record layout.
Record Type B1	Account Balance Data Record	171 Type B1 records per file. One Type B1 record for each of the 32 rows shown on Page 2 of the accompanying Report Definition. After the 53 Type P1 records (see below), include one Type B1 record for each of the 53 rows shown on Page 4 of the accompanying Report Definition. Then include one Type B1 record for each of the 47 rows shown on Page 5 of the accompanying Report Definition. After the 91 Type X1 records (see below), include one Type B1 record for each of the 39 rows shown on Page 8 of the accompanying Report Definition. Each record contains the ending balance or dollar amount recorded in that particular account. See page 7 for record layout.
Record Type P1	Period Activity Data Record	53 Type P1 records per file. One record for each of the 53 rows shown on Page 3 of the accompanying Report Definition. Each record contains the details of the activity of the account during the reporting period. See pages 8 & 9 for record layout.

Record Type X1	Expense Matrix Data Record	91 Type X1 records per file. One record for each of the 91 rows of expense data shown on Pages 6 & 7 of the accompanying Report Definition. Each record contains the dollar amounts for the expense matrix elements. See pages 10 & 11 for record layout.
Record Type C3	Confidential Treatment Record	One or more Type C3 records per file. Contains information to identify the data for which the carrier is seeking confidential treatment or to verify that the carrier is not seeking any confidential treatment. See pages 12 & 13 for record layout.
Record Type F2	Footnote Record	Optional. Zero or more Type F2 records per file. Contains explanatory footnote text. See page 14 & 15 for record layout.
Record Type E3	Erratum Record	Zero Type E3 records in the first submission of a year's data. One or more Type E3 records per file in revisions filed to correct that year's submission. Contains information to identify the data which was corrected in this submission. See pages 16 & 17 for record layout.
Record Type T1	Trailer Record	One Type T1 record per file. The last record of each file. Contains contact person, etc. See page 18 for record layout.

RECORD TYPE H1 - HEADER RECORD

Field	Item	Example	Position	Description
1	Record Number	1001	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (see attached COSA Code Table) Format: include quotation marks.
3	Record Type	"H1"	13-16	Always contains the letter H capitalized and the number 1 with no space between them. Format: include quotation marks.
4	File Name	"LBIL88US.C01"	18-31	The name of the ASCII file. Format: see page 1, paragraph B.4 above. include quotation marks.
5	Year	1988	33-36	The year covered by the data.
6	Quarter #	0	38	Always contains the number 0 since this is an annual data file.
7	Data Entry Date	19890315	40-47	The date on which the data was last entered or revised. Format: YYYYMMDD.
8	Version	"C"	49-51	The version letter (P, C or U) capitalized (for Public, Confidential or Unrestricted) Format: include quotation marks.
9	Submission #	1	53-54	0 for test data purposes only. 1 for first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission. Format: right justified and space filled.
10	End of Record Code	"XQ"	56-59	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas.
The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
      1         2         3         4         5          . . . . .    Ruler line
12345678901234567890123456789012345678901234567890123456789  . . . . .    Ruler line
Sample record:
1001,"LBIL","H1","LBIL88US.C01",1988,0,19890315,"C", 1,"XQ"
```

RECORD TYPE L1 - LABEL RECORD

Field	Item	Example	Position	Description
1	Record Number	1002	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"L1"	13-16	Always contains the letter L capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Report Number	"FCC REPORT 43-02"	18-35	Always contains "FCC REPORT 43-02" capitalized. Format: include quotation marks.
5	Carrier	"Illinois Bell " (spaces until pos. 68)	37-68	Name of the carrier. Format: left justified and space filled. include quotation marks.
6	Study Area	" "	70-91	Name of the study area. Usually blank since this is an operating company level report. Format: left justified and space filled. include quotation marks.
7	Period Covered	"Jan 1988 to Dec 1988"	93-114	Period covered by the data. Format: "mmm yyyy to mmm yyyy" include quotation marks.
8	End of Record Code	"XQ"	116-119	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
         1         2         3         4         5         6         7         8         9         0         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345
Sample record:
1002,"LBIL","L1","FCC REPORT 43-02","Illinois Bell                ","                ","Jan 1988 to Dec 1988","
```

RECORD TYPE B1 - ACCOUNT BALANCE DATA RECORD

e.g.	Item	Example	Position	Description
.	Record Number	1003	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
.	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
.	Record Type	"B1"	13-16	Always contains the letter B capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	1130.0	18-23	Row number as identified on Pages 2, 4, 5 & 6 of the accompanying Report Definition. Valid ranges: 120.0 to 150.0, 340.0 to 490.0, 510.0 to 530.0, 790.0, 1120.0 to 1500.0, 3100.0 to 4550.0, 5001.0 to 5302.0, 7100.0 to 7990.0. Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
5	Account Balance data	5432	25-33	This field contains the ending balance or dollar amount recorded in the particular account. Format: right justified and space filled. Enter -99999 to indicate that the data is not available. Enter -88888 on the "public version" diskette to indicate that confidential treatment has been requested.
6	End of Record Code	"XQ"	35-38	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

If any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, add one or more Type F2 records (after the remaining Type B1, P1, X1 and C3 records) containing footnote text to explain the occasioning facts.

```
         1         2         3
12345678901234567890123456789012345678
Sample records:
1003,"LBIL","B1",1130.0,      5432,"XQ"
1088,"LBIL","B1",3100.0,      5432,"XQ"
1141,"LBIL","B1",5001.0,      5432,"XQ"
1279,"LBIL","B1",7110.0,      5432,"XQ"
```

RECORD TYPE P1 - PERIOD ACTIVITY DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1035	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"P1"	13-16	Always contains the letter P capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	2001.0	18-23	Row number as identified on the accompanying Report Definition. Valid ranges: 210.0 to 260.0, 2001.0 to 2690.0. Format: right justified and space filled, with one decimal place. For row numbers that are integers, append .0 to the row number. For row numbers with one decimal place (e.g., 2215.1), use the row number as shown.
5	Column (ab) data	65432	25-33	This field contains the data corresponding to column (ab) as shown on Page 3 of the accompanying Report Definition. Format: right justified and space filled. Enter -99999 to indicate that the data is not available. Enter -88888 on the "public version" diskette to indicate that confidential treatment has been requested.
6	Column (ac) data	2716	35-43	Column (ac) data Format: see Field 5 above.
7	Column (ad) data	5432	45-53	Column (ad) data Format: see Field 5 above.
8	Column (ae) data	2716	55-63	Column (ae) data Format: see Field 5 above.
9	Column (af) data	60000	65-73	Column (af) data Format: see Field 5 above.

RECORD TYPE P1 - PERIOD ACTIVITY DATA RECORD (continued)

Field	Item	Example	Position	Description
10	End of Record Code	"XQ"	75-78	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

If any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, add one or more Type F2 records (after the remaining Type P1, B1, X1 and C3 records) containing footnote text to explain the occasioning facts.

```
        1         2         3         4         5         6         7
12345678901234567890123456789012345678901234567890123456789012345678
Sample records:
1056,"LBIL","P1",2001.0,    65432,    2716,    5432,    2716,   60000,"XQ"
1056,"LBIL","P1",2215.1,    15432,    2716,    5432,    2716,   10000,"XQ"
```

RECORD TYPE X1 - EXPENSE MATRIX DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1188	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"X1"	13-16	Always contains the letter X capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	6112.0	18-23	Row number as identified on the accompanying Report Definition. Valid ranges: 610.0 to 730.0, 6110.0 to 6790.0. Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
5	Column (ab) data	21728	25-33	This field contains the data corresponding to column (ab) as shown on Pages 6 & 7 of the accompanying Report Definition. Format: right justified and space filled. Enter -99999 to indicate that the data is not available. Enter -88888 on the "public version" diskette to indicate that confidential treatment has been requested.
	Column (ac) data	5432	35-43	Column (ac) data Format: see Field 5 above.
7	Column (ad) data	5432	45-53	Column (ad) data Format: see Field 5 above.
8	Column (ae) data	5432	55-63	Column (ae) data Format: see Field 5 above.
9	Column (af) data	5432	65-73	Column (af) data Format: see Field 5 above.

RECORD TYPE X1 - EXPENSE MATRIX DATA RECORD (continued)

Field	Item	Example	Position	Description
10	End of Record Code	"XQ"	75-78	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

If any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, add one or more Type F2 records (after the remaining Type X1, B1 and C3 records) containing footnote text to explain the occasioning facts.

```
        1         2         3         4         5         6         7
[illegible]5678901234567890123456789012345678901234567890123456789012345678
Sample records:
[illegible],"LBIL","X1",6112.0,    21728,     5432,     5432,     5432,     5432,"XQ"
```

RECORD TYPE C3 - CONFIDENTIAL TREATMENT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1318	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"C3"	13-16	Always contains the letter C capitalized and the number 3 with no space between them. Format: include quotation marks.
4	Record Number (for the confidential data)	1035	18-21	This field contains the record number of the record which contains the data for which the carrier is seeking confidential treatment. If the request is for an entire column, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the confidential data appears. Format: include quotation marks. left justified and space filled.
6	Row Number	2001.0	30-35	This field contains the row number of the row which contains the confidential data as identified in the accompanying Report Definition. If the request is for an entire column, enter 9999.0. Format: right justified and space filled, with one decimal place. For row numbers that are integers, append .0 to the row number. For row numbers with one decimal place (e.g., 2215.1), use the row number as shown
7	Column Label	"AB"	37-40	This field contains the column letter of the confidential data as identified in the accompanying Report Definition. If the request is for an entire row, enter "ZZ". If the request is for more than one column but less than the entire row, then populate this field and as many as needed of fields 8 thru 10. If no confidential treatment is being requested, then enter " " in all of fields 7 thru 26. Format: include quotation marks. left justified and space filled.

RECORD TYPE C3 - CONFIDENTIAL TREATMENT RECORD (continued)

Rec'd	Item	Example	Position	Description
6	Second Column Label	"AC"	42-45	.....
7	Third Column Label	"AD"	47-50	. Fields 8 thru 26 are similar
.				. to Field 7 and are used
.				. when the request is for
.				. the same row and more than
.				. one column.
26	Twentieth Col. Label	" "	132-135	..... Otherwise, enter " ".
				Note: Fields 11 thru 26 are not used in this record in data file.
	End of Record Code	"XQ"	137-140	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
         1         2         3         4         5         6         7         8         9
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567
Sample records:
1318,"LBIL","C3",1035,"I   ",2001.0,"AB","AC","AD","  ","  ","  ","  ","  ","  ","  ","  ","  ","
1319,"LBIL","C3",1056,"I   ",2215.1,"AE","AF","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","
1320,"LBIL","C3",9999,"I   ",9999.0,"BB","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","
1321,"LBIL","C3",1278,"II  ", 730.0,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","
1322,"LBIL","C3",1317,"II  ", 790.0,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","
```

```
  1         1         1         1         1
  0         1         2         3         4
1234567890123456789012345678901234567890123456789
Continuation of sample records:
","  ","  ","  ","  ","  ","  ","  ","XQ"
","  ","  ","  ","  ","  ","  ","  ","XQ"
","  ","  ","  ","  ","  ","  ","  ","XQ"
","  ","  ","  ","  ","  ","  ","  ","XQ"
","  ","  ","  ","  ","  ","  ","  ","XQ"
```

RECORD TYPE F2 - FOOTNOTE TEXT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1323	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"F2"	13-16	Always contains the letter F capitalized and the number 2 with no space between them. Format: include quotation marks.
4	Record Number (for the footnoted data)	1035	18-21	This field contains the record number of the record which contains the footnoted data. If the footnote pertains to an entire column, an entire table, or the entire submission, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the footnoted data appears. If the footnote pertains to an entire table, use "ZZZZ". Format: include quotation marks. left justified and space filled.
6	Row Number	2001.0	30-35	This field contains the row number of the row which contains the footnoted data as identified in the accompanying Report Definition. If the footnote pertains to an entire column, an entire table, or the entire submission, enter 9999.0. Format: right justified and space filled, with one decimal place. For row numbers that are integers, append .0 to the row number. For row numbers with one decimal place (e.g., 2215.1), use the row number as shown.
7	Column Label	"AE"	37-40	This field contains the column letter of the footnoted data as identified in the accompanying Report Definition. If the footnote pertains to an entire row, an entire table, or the entire submission, enter "ZZ". Format: include quotation marks. left justified and space filled.

RECORD TYPE F2 - FOOTNOTE TEXT RECORD (continued)

Field	Item	Example	Position	Description
8	Footnote Number	1	42-43	The number of this particular footnote. Valid range: 1 to 99. Format: right justified and space filled.
9	Sequence Number	1	45-46	The sequence number of the record within the footnote. In other words, the order of the specific record in the sequence of records which, when combined, will provide the entire footnote. Valid range: 1 to 99. Format: right justified and space filled.
10	Footnote Text	"Footnote text * (spaces until pos. 104)	48-104	The text of the footnote or of the continuation line. Format: include quotation marks at the beginning and end of this field and left justify within these quotation marks.
11	End of Record Code	"XQ"	106-109	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
         1         2         3         4         5         6         7         8         9         0         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789
Sample records:
1023,"LBIL","F2",1035,"I   ",2001.0,"AE", 1, 1,"Footnote text for footnote 1                                  ","XQ"
1024,"LBIL","F2",1035,"I   ",2001.0,"AE", 1, 2,"continuation text for footnote 1                              ","XQ"
1025,"LBIL","F2",1035,"I   ",2001.0,"AE", 1, 3,"last line of footnote 1                                       ","XQ"
1026,"LBIL","F2",1056,"I   ",2215.1,"ZZ", 2, 1,"Footnote 2 pertains to all cols. of Table I row 2215.1       ","XQ"
1027,"LBIL","F2",9999,"I   ",9999.0,"BB", 3, 1,"Footnote 3 pertains to all rows of Table I column BB         ","XQ"
1028,"LBIL","F2",1278,"II  ", 730.0,"AC", 4, 1,"Footnote 4 pertains to Table II row 730 column AC           ","XQ"
```

RECORD TYPE E3 - ERRATUM RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1329	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"E3"	13-16	Always contains the letter E capitalized and the number 3 with no space between them. Format: include quotation marks.
4	Record Number (for the corrected data)	1035	18-21	This field contains the record number of the record which contains the data which was corrected in this submission. If an entire column, an entire table, or the entire submission was corrected, use 9999. Format: right justified and space filled.
	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the corrected data appears. If an entire table or submission was corrected, use "ZZZZ". Format: include quotation marks. left justified and space filled.
	Row Number	2001.0	30-35	This field contains the row number of the of the row which contains the corrected data as identified in the accompanying Report Definition. If an entire column, an entire table, or the entire submission was corrected, enter 9999.0. Format: right justified and space filled, with one decimal place. For row numbers that are integers, append .0 to the row number. For row numbers with one decimal place (e.g., 2215.1), use the row number as shown.
	Column Label	"AB"	37-40	This field contains the column letter of the corrected data as identified in the accompanying Report Definition. If an entire row, an entire table, or the entire submission was corrected, enter "ZZ". If more than one column but less than the entire row was corrected, then populate this field and as many as needed of fields 8 thru 10. Format: include quotation marks. left justified and space filled.

RECORD TYPE E3 - ERRATUM RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"AC"	42-45	.....
9	Third Column Label	"AD"	47-50	. Fields 8 thru 26 are similar
.				. to Field 7 and are used
.				. when the correction is in
.				. the same row and more than
.				. one column.
26	Twentieth Col. Label	" "	132-135	..... Otherwise, enter " ".
				Note: Fields 11 thru 26 are not used in this record in this data file.
27	Footnote Number	1	137-138	This field contains the footnote number that explains the correction. If there is no footnote, use a zero. Format: right justified and space filled.
28	End of Record Code	"XQ"	140-143	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
        1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345
Sample records:
1329,"LBIL","E3",1035,"I   ",2001.0,"AE","AF",  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,
1330,"LBIL","E3",1042,"I   ", 210.0,"AE","AF",  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,
1331,"LBIL","E3",1056,"I   ",2215.1,"ZZ",  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,
1332,"LBIL","E3",9999,"I   ",9999.0,"BB",  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,
1333,"LBIL","E3",1278,"II  ", 730.0,"AC",  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,
```

```
  1         1         1         1         1
  0         1         2         3         4
90123456789012345678901234567890123456789012345678901234
Continuation of sample records:
  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  , 1,"XQ"
  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  , 0,"XQ"
  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  , 2,"XQ"
  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  , 3,"XQ"
  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  , 4,"XQ"
```

RECORD TYPE T1 - TRAILER RECORD

Field	Item	Example	Position	Description
1	Record Number	1334	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"T1"	13-16	Always contains the letter T capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Contact Person	"John Doe " (spaces until pos. 59)	18-59	The name of the person to contact if there are questions about the report. Format: include quotation marks.
5	Telephone #	"(202) 555-1212 x123 "	61-82	The Contact Person's telephone number. Format: include quotation marks.
6	End of Record Code	"XQ"	84-87	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

Sample record:

```
         1         2         3         4         5         6         7         8
12345678901234567890123456789012345678901234567890123456789012345678901234567

1334,"LBIL","T1","John Doe                                      ","(202) 555-1212 x123 ","XQ"
```

A. Introduction

This document contains the page layout and detailed specifications for the paper report to be filed as FCC Report 43-02, the ARMIS USOA Report.

B. General Instructions

1. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

2. The Ruler Lines included on the page layouts with the column titles are included only to assist the reader. Do not include ruler lines as lines in the report.

C. Data Entry Conventions

1. Standard accounting procedures will apply in determining the nature of any entry (e.g., each Uncollectible Revenue item, a debit entry, shall be entered as a "positive" number unless the balance therein reported is a credit). Entries of a reverse or contrary character shall be indicated by the placing of a minus sign in the column immediately preceding the numeric data, e.g., use -4, NOT - 4 or (4).

2. In any numeric data field for which the data is "Not Available", enter N/A. On the "Public Version" report in any numeric data field for which the data is "Withheld", enter W/H.

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all monetary figures must be rounded to the nearest thousand dollars.

E. Page Layouts

The twenty-one page layouts are illustrated on pages 3 through 23. The paper report will consist of the following pages, in order:

	Illustrated on Page
Table I Page 1	3
Table I Pages 2.1 and 2.2	4 - 5
Table I Pages 3.1 and 3.2	6 - 7
Table I Page 4	8
Table I Page 5	9
Table II Page 1	10
Table II Page 2	11
Table II Pages 3.1 and 3.2	12 - 13
Table II Pages 4.1 and 4.2	14 - 15
Table II Pages 5.1 and 5.2	16 - 17
Table II Page 6	18
Table II Page 7	19
The Confidential Treatment Table (at least one page and as many pages as needed)	20
The Footnote Table (at least one page and as many pages as needed)	21
The Erratum Table (for submission number 2 or higher, as many pages as needed)	22
The Certification Page	23

FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 1 OF 5

TABLE I - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Amount
	(a)	(b)
1234.1	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789 ... Ruler Line
	Current Assets	
1130	Cash	
1140	Special cash deposits	
1150	Working cash advances	
1160	Temporary investments	
1120	Cash and equivalents	
1180	Telecommunications accounts receivable	
1181	Accounts receivable allowance-telecommunications	
1190	Other accounts receivable	
1191	Accounts receivable allowance-other	
1200	Notes receivable	
1201	Notes receivable allowance	
1210	Interest and dividends receivable	
1220	Material and supplies	
120	Total Noncash current (excluding prepayments)	
1290	Prepaid rents	
1300	Prepaid taxes	
1310	Prepaid insurance	
1320	Prepaid directory expenses	
1330	Other prepayments	
1280	Prepayments	
1350	Other Current Assets	
130	Total Current Assets	
	Noncurrent Assets	
1401	Investments in affiliated companies	
1402	Investments in nonaffiliated companies	
1406	Nonregulated investments	
1407	Unamortized debt issuance expense	
1408	Sinking funds	
1410	Other noncurrent assets	
1438	Deferred maintenance and retirements	
1439	Deferred charges	
1500	Other jurisdictional assets-net	
150	Total Noncurrent Assets	

If applicable:
THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE.
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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 2.1 OF 5

TABLE I - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Beginning Balance	Additions	Retirements	
	(aa)	(ab)	(ac)	(ad)	
1234.1	xxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Rulor Line
	Regulated Plant				
2001	TPIS				
2002	PHFTU				
2003	TPUC-short term				
2004	TPUC-long term				
2005	Telecom plant adjstmnt				
2006	Nonoperating plant				
2007	Goodwill				
210	Total Reg. Plant				
	TPIS - General Support				
2111	Land				
2112	Motor vehicles				
2113	Aircraft				
2114	Special purpose vehic				
2115	Garage work equipment				
2116	Other work equipment				
2121	Buildings				
2122	Furniture				
2123	Office Equipment				
2124	Gen purpose computers				
2110	Land & Support				
	TPIS - Central Office				
2211	Analog elec switch				
2212	Digit elec switch				
2215.1	Step-by-step switching				
2215.2	Crossbar switching				
2215.3	Other elec-mechan sw				
2215	Electro-mechan sw				
2210	Cen Office-Sw				
2220	Operator sys				

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 2.2 OF 5

TABLE I - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Transfers/ Adjustments	Ending Balance	
	(aa)	(ae)	(af)	
1234.1	xxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
	Regulated Plant			
2001	TPIS			
2002	PHFTU			
2003	TPUC-short term			
2004	TPUC-long term			
2005	Telecom plant adjstmnt			
2006	Nonoperating plant			
2007	Goodwill			
210	Total Reg. Plant			
	TPIS - General Support			
2111	Land			
2112	Motor vehicles			
2113	Aircraft			
2114	Special purpose vehic			
2115	Garage work equipment			
2116	Other work equipment			
2121	Buildings			
2122	Furniture			
2123	Office Equipment			
2124	Gen purpose computers			
2110	Land & Support			
	TPIS - Central Office			
2211	Analog elec switch			
2212	Digit elec switch			
2215.1	Step-by-step switching			
2215.2	Crossbar switching			
2215.3	Other elec-mechan sw			
2215	Electro-mechan sw			
2210	Cen Office-Sw			
2220	Operator sys			

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STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 3.1 OF 5

TABLE I - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Beginning Balance	Additions	Retirements	
	(aa)	(ab)	(ac)	(ad)	
1234.1	xxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Rollup Line
2231.1	Satellite & earth sta				
2231.2	Other radio facilities				
2231	Radio systems				
2232	Circuit equipment				
2230	Transmission				
	TPIS - IOT				
2311	Station apparatus				
2321	Customer premise wire				
2341	Large PBX				
2351	Publ tel trmnal equip				
2362	Other terminal equip				
2310	IOT				
	TPIS - Cable & Wire				
2411	Poles				
2421	Aerial cable				
2422	Underground cable				
2423	Buried cable				
2424	Submarine cable				
2425	Deep sea cable				
2426	Intrabldg network cble				
2431	Aerial wire				
2441	Conduit systems				
2410	Cable & Wire				
	TPIS - Amortiz Assets				
2681	Capital Leases				
2682	Leasehold improvements				
2680	Amort Tangible				
2690	Intangibles				
260	Total TPIS				

If applicable:
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STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 3.2 OF 5

TABLE I - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Transfers/ Adjustments	Ending Balance	
	(aa)	(ae)	(af)	
1234.1	xxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
2231.1	Satellite & earth sta			
2231.2	Other radio facilities			
2231	Radio systems			
2232	Circuit equipment			
2230	Transmission			
	TPIS - IOT			
2311	Station apparatus			
2321	Customer premise wire			
2341	Large PBX			
2351	Publ tel trmnal equip			
2362	Other terminal equip			
2310	IOT			
	TPIS - Cable & Wire			
2411	Poles			
2421	Aerial cable			
2422	Underground cable			
2423	Buried cable			
2424	Submarine cable			
2425	Deep sea cable			
2426	Intrabldg network cble			
2431	Aerial wire			
2441	Conduit systems			
2410	Cable & Wire			
	TPIS - Amortiz Assets			
2681	Capital Leases			
2682	Leasehold improvements			
2680	Amort Tangible			
2690	Intangibles			
260	Total TPIS			

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 4 OF 5

TABLE I - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Amount
	(ba)	(bb)
1234.1	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789
	Depreciation and Amortization	
3100	Accumulated depreciation	
3200	Accumulated depreciation - PHFTU	
3300	Accumulated depreciation - Nonoperating	
3410	Accumulated amortization - Capitalized leases	
3420	Accumulated amortization - Leasehold improvements	
3400	Accumulated amortization - Tangible	
3500	Accumulated amortization - Intangible	
3600	Accumulated amortization - Other	
340	Total Depreciation and Amortization	
350	Net Plant	
360	Total Assets	
	Current Liabilities	
4010	Accounts Payable	
4020	Notes payable	
4030	Advanced billing and payments	
4040	Customer's deposits	
4050	Current maturities - long-term	
4060	Current maturities - capital leases	
4070	Income taxes - accrued	
4080	Other taxes - accrued	
4100	Net current deferred operating income taxes	
4110	Net current deferred nonoperating income taxes	
4120	Other accrued liabilities	
4130	Other current liabilities	
410	Total Current Liabilities	

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx PAGE 1 OF 7

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Amount
	(a)	(b)
1234.1	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789 ... Ruler Line
	REVENUE ACCOUNTS	
	Local Network Service Revenues	
5001	Basic area revenue	
5002	Optional extended area revenue	
5003	Cellular mobile service revenue	
5004	Other mobile service revenue	
510	Basic local service rev (Class A Account 5000)	
5010	Public telephone revenue	
5040	Local private line revenue	
5050	Customer premises revenue	
5060	Other local exchange revenue	
5069	Other local exchange revenue settlements	
520	Basic local service revenue	
	Network Access Services Revenues	
5081	End user revenue	
5082	Switched access revenue	
5083	Special access revenue	
5084	State access revenue	
5080	Network access revenue	
	Long Distance (LD) Network Services Revenues	
5111	LD inward-only revenue	
5112	LD outward-only revenue	
5110	Unidirectional LD Revenue	

If applicable:
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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx PAGE 2 OF 7

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Amount
	(a)	(b)
1234.1	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789
5121	Subvoice grade LD private network revenue	
5122	Voice grade LD private network revenue	
5123	Audio program grade LD private network revenue	
5124	Video program grade LD private network revenue	
5125	Digital transmission LD private network revenue	
5126	LD private network switching revenue	
5128	Other LD private network revenue	
5129	Other LD private network revenue settlements	
5120	Long distance private network revenue	
5160	Other long distance revenue	
5169	Other long distance revenue settlements	
5100	Long Distance Message Revenue	
	Miscellaneous Revenues	
5230	Directory revenue	
5240	Rent revenue	
5250	Corporate operations revenue	
5261	Special billing arrangements revenue	
5262	Customer operations revenue	
5263	Plant operations revenue	
5264	Other incidental regulated revenue	
5269	Other revenue settlements	
5260	Miscellaneous revenues (Class A)	
5270	Carrier billing and collection revenue	
5280	Other nonregulated revenue	
5200	Miscellaneous revenues	
	Uncollectible Revenues	
5301	Uncollectible revenue-telecommunications	
5302	Uncollectible revenue-other	
5300	Uncollectible revenue	
530	Total Operating Revenues	

If applicable:
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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx PAGE 3.1 OF 7

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Total	Salaries and Wages	Benefits	
	(aa)	(ab)	(ac)	(ad)	
1234.1	xxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	EXPENSE ACCOUNTS				
	Plant Specific Ops				
6112	Motor vehicle				
610	Clearance - MV				
615	Net Balance - MV				
6113	Aircraft				
620	Clearance - Aircr				
625	Net Balance - Aircr				
6114	Special purpose vehicle				
630	Clearance - SPV				
635	Net Balance - SPV				
6115	Garage work equipment				
6116	Other work equipment				
640	Clearance - OWE				
645	Net Balance - OWE				
6110	Network support				
6121	Land & building				
6122	Furniture & artworks				
6123	Office equipment				
6124	Gen purpose computers				
6120	General support				
6211	Analog electronic				
6212	Digital electronic				
6215	Electro-mechanical				
6210	Cntrl Office Sw				
6220	Operator systems				
6231	Radio systems				
6232	Circuit equipment				
6230	Cntrl office Tr				
6311	Station apparatus				
6341	Large PBX				
6351	Public tel tmnl equip				
6362	Other terminal equip				
6310	IOT expense				

If applicable:
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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx PAGE 3.2 OF 7

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Rents	Other Expenses	
	(aa)	(ae)	(af)	
1234.1	xxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
	EXPENSE ACCOUNTS			
	Plant Specific Ops			
6112	Motor vehicle			
610	Clearance - MV			
615	Net Balance - MV			
6113	Aircraft			
620	Clearance - Aircr			
625	Net Balance - Aircr			
6114	Special purpose vehicle			
630	Clearance - SPV			
635	Net Balance - SPV			
6115	Garage work equipment			
6116	Other work equipment			
640	Clearance - OWE			
645	Net Balance - OWE			
6110	Network support			
6121	Land & building			
6122	Furniture & artworks			
6123	Office equipment			
6124	Gen purpose computers			
6120	General support			
6211	Analog electronic			
6212	Digital electronic			
6215	Electro-mechanical			
6210	Cntrl Office Sw			
6220	Operator systems			
6231	Radio systems			
6232	Circuit equipment			
6230	Cntrl office Tr			
6311	Station apparatus			
6341	Large PBX			
6351	Public tel tmnl equip			
6362	Other terminal equip			
6310	IOT expense			

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx PAGE 4.1 OF 7

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Total	Salaries and Wages	Benefits	
	(aa)	(ab)	(ac)	(ad)	
1234.1	xxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
6411	Poles				
6421	Aerial cable				
6422	Underground cable				
6423	Buried cable				
6424	Submarine cable				
6425	Deep sea cable				
6426	Intrabldg network cable				
6431	Aerial wire				
6441	Conduit Systems				
6410	Cable & Wire				
650	Total Plant Spc				
	Plant Nonspecific Ops				
6511	PHFTU				
6512	Provisioning				
660	Clearance - Prov				
665	Net Balance - Prov				
6510	Other PP&E Exp				
6531	Power				
6532	Network administration				
6533	Testing				
6534	Plant ops admin				
670	Clearance - POA				
675	Net Balance - POA				
6535	Engineering				
680	Clearance - Eng				
685	Net Balance - Eng				
6530	Network Ops				
6540	Access				
6561	Depreciation-TPIS		N/A	N/A	
6562	Depreciation-PHFTU		N/A	N/A	
6563	Amortization-tangible		N/A	N/A	
6564	Amortization-intangible		N/A	N/A	
6565	Amortization-other		N/A	N/A	
6560	Dep & Amort Exp		N/A	N/A	
690	Total Plant Non				

If applicable:
THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE.
SEE THE CONFIDENTIAL TREATMENT TABLE FOR SPECIFIC INFORMATION.

FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx PAGE 4.2 OF 7

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Rents	Other Expenses	
	(aa)	(ae)	(af)	
1234.1	xxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
6411	Poles			
6421	Aerial cable			
6422	Underground cable			
6423	Buried cable			
6424	Submarine cable			
6425	Deep sea cable			
6426	Intrabldg network cable			
6431	Aerial wire			
6441	Conduit Systems			
6410	Cable & Wire			
650	Total Plant Spc			
	Plant Nonspecific Ops			
6511	PHFTU			
6512	Provisioning			
660	Clearance - Prov			
665	Net Balance - Prov			
6510	Other PP&E Exp			
6531	Power			
6532	Network administration			
6533	Testing			
6534	Plant ops admin			
670	Clearance - POA			
675	Net Balance - POA			
6535	Engineering			
680	Clearance - Eng			
685	Net Balance - Eng			
6530	Network Ops			
6540	Access	N/A		
6561	Depreciation-TPIS	N/A	N/A	
6562	Depreciation-PHFTU	N/A	N/A	
6563	Amortization-tangible	N/A	N/A	
6564	Amortization-intangible	N/A	N/A	
6565	Amortization-other	N/A	N/A	
6560	Dep & Amort Exp	N/A	N/A	
690	Total Plant Non			

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Approved by OMB
3060-0395
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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx PAGE 5.1 OF 7

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Total	Salaries and Wages	Benefits	
	(aa)	(ab)	(ac)	(ad)	
1234.1	xxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Enter Line
	Customer Operations				
6611	Product management				
6612	Sales				
6613	Product Advertising				
6610	Marketing Expense				
6621	Call Completion				
6622	Number Services				
6623	Customer Services				
6620	Services Expense				
700	Total Cust Ops				
	Corporate Operations				
6711	Executive				
6712	Planning				
6710	Exec & Planning				
6721	Accounting & finance				
6722	External relations				
6723	Human resources				
6724	Information management				
6725	Legal				
6726	Procurement				
6727	Research & development				
6728	Other general & admin				
6720	General & Admin				
6790	Provis uncollect notes		N/A	N/A	
710	Total Corp Ops				
720	Total Ops Exp				
730	Net Ops Rev				

If applicable:
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FCC REPORT 43-02
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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx PAGE 5.2 OF 7

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Rents	Other Expenses	
	(aa)	(ae)	(af)	
1234.1	xxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
	Customer Operations			
6611	Product management	N/A		
6612	Sales	N/A		
6613	Product Advertising	N/A		
6610	Marketing Expense	N/A		
6621	Call Completion	N/A		
6622	Number Services	N/A		
6623	Customer Services	N/A		
6620	Services Expense	N/A		
700	Total Cust Ops	N/A		
	Corporate Operations			
6711	Executive	N/A		
6712	Planning	N/A		
6710	Exec & Planning	N/A		
6721	Accounting & finance	N/A		
6722	External relations	N/A		
6723	Human resources	N/A		
6724	Information management	N/A		
6725	Legal	N/A		
6726	Procurement	N/A		
6727	Research & development	N/A		
6728	Other general & admin	N/A		
6720	General & Admin	N/A		
6790	Provis uncollect notes	N/A	N/A	
710	Total Corp Ops	N/A		
720	Total Ops Exp			
730	Net Ops Rev			

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3060-0395
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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx PAGE 6 OF 7

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Amount
	(ba)	(bb)
1234.1	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789 ... Ruler Line
	Other Operating Income and Expense	
7110	Income from custom work	
7130	Return from nonreg use of regulated facilities	
7140	Gains/losses from foreign exchange	
7150	Gains/losses from disposition of land & artworks	
7160	Other operating gains and losses	
7100	Other operating income and expenses	
	Operating Taxes	
7210	Operating investment tax credits-net	
7220	Operating federal income taxes	
7230	Operating state and local income taxes	
7240	Operating other taxes	
7250	Provision for deferred operating income tax-net	
7200	Operating Taxes	
	Nonoperating Income and Expense	
7310	Dividend income	
7320	Interest income	
7330	Income from sinking and other funds	
7340	Allowance for funds used during construction(AFUDC)	
7350	Gains/losses from the disposition of property	
7360	Other nonoperating income	
7370	Special charges	
7300	Nonoperating Income and Expense	
	Nonoperating Taxes	
7410	Nonoperating investment tax credits-net	
7420	Nonoperating federal income taxes	
7430	Nonoperating state and local income taxes	
7440	Nonoperating other taxes	
7450	Provision for deferred nonoperating income tax-net	
7400	Nonoperating Taxes	

If applicable:
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SEE THE CONFIDENTIAL TREATMENT TABLE FOR SPECIFIC INFORMATION.

FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx PAGE 7 OF 7

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Amount
	(ba)	(bb)
1234.1	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789
	Interest and Related Items	
7510	Interest on funded debt	
7520	Interest expense-capital leases	
7530	Amortization of debt issuance expense	
7540	Other interest deductions	
7500	Interest and Related Items	
	Extraordinary Items	
7610	Extraordinary income credits	
7620	Extraordinary income charges	
7630	Current inc tax effect of extraordinary items-net	
7640	Provision for deferred inc tax effect of items-net	
7600	Extraordinary Items	
	Jurisdictional Differences & Nonregulated Income	
7910	Income effects of jurisdictional differences-net	
7990	Nonregulated net income	
790	Net Income	

If applicable:
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FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy CONF. TREATMENT TABLE
COSA: xxxx PAGE 1 OF x

CONFIDENTIAL TREATMENT TABLE

Table	Row	Column(s)
(a)	(b)	(c)
xxxx	1234.1	xx,xx,xx,xx, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x ... Ruler Line

sample entries:

I	2001	AB,AC,AD
I	2215.1	AE,AF
I	ALL	BB
II	730	ALL
II	790	ALL

THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR THE ABOVE DATA
IN THIS REPORT.

-OR-

THE COMPANY HAS NOT REQUESTED CONFIDENTIAL TREATMENT FOR ANY DATA
IN THIS REPORT.

FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy FOOTNOTE TABLE
COSA: xxxx PAGE 1 OF x

FOOTNOTE TABLE

Table	Row	Col	FN#	Footnote
(a)	(b)	(c)	(d)	(e)
xxxx	1234.1	xxx	12	xxxxxxxxxxxxxxxxxxxx

FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy ERRATUM TABLE
USOA: xxxx PAGE 1 OF x

ERRATUM TABLE

Table	Row	Column(s)	FN#	
(a)	(b)	(c)	(d)	
xxxx	1234.1	xx,xx,xx,xx, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x	12	... Ruler Line

sample entries:

I	2001	AE,AF	1
I	210	AE,AF	
I	2215.1	ALL	2
I	ALL	BB	3
II	730	AC	4

THE ABOVE DATA HAS BEEN CORRECTED IN THIS SUBMISSION.
SEE THE FOOTNOTE TABLE FOR FOOTNOTES WHERE APPLICABLE.

CERTIFICATION

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

DIVESTED BOC INDEX

Holding Company	Operating Company	Study Area	Study Area Code
Ameritech			AMTR
	1. Illinois Bell	- Illinois	LBIL
	2. Indiana Bell	- Indiana	NBIN
	3. Michigan Bell	- Michigan	MBMI
	4. Ohio Bell	- Ohio	OBOH
	5. Wisconsin Bell	- Wisconsin	WTWI
Bell Atlantic			BATR
	1. Chesapeake and Potomac		CPTC
		- Dist. of Columbia	CDDC
		- Maryland	CMMD
		- Virginia	CVVA
		- West Virginia	CWWV
	2. Diamond State Telephone	- Delaware	DSDE
	3. Bell of Pennsylvania	- Pennsylvania	PAPA
	4. New Jersey Bell	- New Jersey	NJNJ
Bell South			BSTR
	1. Southern Bell		SBTC
		- Florida	SBFL
		- Georgia	SBGA
		- North Carolina	SBNC
		- South Carolina	SBSC
	2. South Central Bell		SCTC
		- Alabama	SCAL
		- Kentucky	SCKY
		- Louisiana	SCLA
		- Mississippi	SCMS
		- Tennessee	SCTN
NYNEX			NXTR
	1. New England Telephone		NETC
		- Maine	NEME
		- Massachusetts	NEMA
		- New Hampshire	NENH
		- Rhode Island	NERI
		- Vermont	NEVT
	2. New York Telephone	- New York	NYNY
Pacific Telesis			PTTR
	1. Pacific Bell	- California	PTCA
	2. Nevada Bell	- Nevada	PTNV
Southwestern Bell Telephone Company			SWTR
		- Arkansas	SWAR
		- Kansas	SWKS
		- Missouri	SWMO
		- Oklahoma	SWOK
		- Texas	SWTX

Holding Company	Operating Company	Study Area	Study Area Code
U.S. West			USTR
	1. Mountain Bell		MSTC
		- Arizona	MSAZ
		- Colorado	MSCO
		- Idaho	MSID
		- Montana	MSMT
		- New Mexico	MSNM
		- Utah	MSUT
		- Wyoming	MSWY
	2. Northwestern Bell		NWTC
		- Iowa	NWIA
		- Minnesota	NWMN
		- Nebraska	NWNE
		- North Dakota	NWND
		- South Dakota	NWSD
	3. Pacific Northwest Bell		PNTC
		- Idaho	PNID
		- Oregon	PNOR
		- Washington	PNWA
Total Divested Bell Operating Companies			TBOC

INDEPENDENT COMPANY INDEX

Holding Company	Operating Company	Study Area	Study Area Code
Alascom, Inc.		- Alaska	AKAK
Central Telephone Company			CETC
	1. of Florida	- Florida	CEFL
	2. of Illinois	- Illinois	CEIL
	3. of Nevada	- Nevada	CENV
	4. of Virginia	- Virginia	CEVA
Cincinnati Bell Telephone	- Ohio & Kentucky		CBTC
Continental Telephone Company			COTC
	1. Contel of California	- California	COCA
	2. Contel of Illinois	- Illinois	COIL
	3. Contel of Missouri	- Missouri	COMO
	4. Contel of New York	- New York	CONY
	5. Contel of Texas	- Texas	COTX
	6. Contel of Virginia	- Virginia	COVA
GTE Telephone Operating Companies			GTEC
1. General Telephone Company of California		- California	GTCA
2. General Telephone Company of Florida		- Florida	GTFL
3. General Telephone Company of the Northwest, Inc.			GTNW
		- Idaho & Montana	GTNA
		- Idaho	GTID
		- Montana	GTMT
		- OR, WA & Wstn CA	GTNB
		- Oregon	GTOR
		- Washington	GTWA
		- CA - West Coast	GNCA
4. General Telephone Company of the South			GTSO
		- Alabama	GTAL
		- Georgia	GTGA
		- Kentucky	GTKY
		- North Carolina	GTNC
		- South Carolina	GTSC
		- Tennessee	GTTN
		- Virginia	GTVA
		- West Virginia	GTWV

Holding Company	Operating Company	Study Area	Study Area Code
	5. General Telephone Company of the Southwest		
		- Arkansas	GTSW
		- New Mexico	GTAR
		- Oklahoma	GTNM
		- Texas	GTOK
	6. GTE of the North, Inc.		GTTX
		- Illinois	GTNO
		- Indiana	GTIL
		- Iowa	GTIN
		- Michigan	GTIA
		- Minnesota	GTMI
		- Missouri	GTMN
		- Nebraska (also serving Kansas)	GTMO
		- Ohio	GTNE
		- Pennsylvania	GTOH
		- Wisconsin	GTPA
			GTWI
	7. Hawaiian Telephone Company	- Hawaii	GTHI
Lincoln Telephone Company		- Nebraska	LTNE
Puerto Rico Telephone Company		- Puerto Rico	PRTC
Rochester Telephone Corporation		- New York	RTNY
Southern New England Telephone		- Connecticut	SNET
United Telephone System.			UTTC
	1. United Tel. Co. of Florida	- Florida	UTFL
	2. United Tel. Co. of Indiana	- Indiana	UTIN
	3. United Tel. Co. of Missouri	- Missouri	UTMO
	4. Carolina Tel. and Tel. Co.	- North Carolina	UTNC
	5. United Tel. Co. of Ohio	- Ohio	UTOH
	6. United Tel. Co. of Penn.	- Pennsylvania	UTPA
	7. United Inter-Mountain Tel. Co.		UTIM
		- Tennessee	UTTN
		- Virginia	UTVA
Total Independent Companies			TICO
Total Industry			TOTL

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-182

In the Matter of

Automated Reporting Requirements
for Certain Class A and Tier 1
Telephone Companies (Parts 31,
43, 67, and 69 of the FCC's Rules)

ORDER

Adopted: December 19, 1988; Released: January 6, 1989

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In an Order, released on September 17, 1987,[1] in the above captioned docket, the Commission established an automated system of reports[2] for collecting financial and operating data from certain local exchange carriers (LECs).[3] On October 14, 1988, the Commission released the *ARMIS Reconsideration Order* which resolved the major, substantive and procedural issues raised by the parties[4] and delegated to the Chief of the Common Carrier Bureau the authority to resolve remaining issues, which are minor and technical in nature, according to a specific schedule.

2. In this *Order*, we revise the Quarterly Report for LECs to incorporate the changes required by the *ARMIS Reconsideration Order* and to reflect the resolution of the technical issues delegated to the Common Carrier Bureau by the *ARMIS Reconsideration Order*.[5] On our own motion, we also make several technical revisions of the ARMIS Quarterly Report to reflect changing regulatory needs.[6]

II. BACKGROUND

3. In the *ARMIS Order*, the Commission adopted an automated system of reports to collect data needed to administer its accounting, joint cost, jurisdictional separations, rate base, rate of return and access charge rules. In the *ARMIS Reconsideration Order*, the Commission affirmed that LECs are required to provide data on non-FCC jurisdictional revenues, that costs assigned to the intrastate jurisdiction are required, and that study area level reporting is essential to the development of the ARMIS data base. It also eliminated the requirement that the LECs display rate of return data for services and activities for which it does not prescribe a rate of return.[7] In addition, the Commission directed the Common Carrier Bureau to resolve the technical issues raised by the parties concerning the design and format of the reporting forms. The Commission also directed the Bureau to investigate a number of problems raised by the petitions and by the Bureau's review of the initial filings of the Quarterly Report. In this *Order*, we address all of these issues and adopt the Quarterly Report and technical specifications displayed in the attached Appendix.[8]

III. ISSUES AND DISCUSSION

A. *Demand Data*

4. In the *ARMIS Order*, the Commission required certain interstate access demand data to be filed as Table II of the Quarterly Report. Carrier common line (CCL) demand is measured in terms of minutes of use (MOU) and is derived by dividing revenues by the tariffed rate. These data enable us to monitor the carriers' demand forecasts (forecasted MOU), upon which the carriers' access rates are based, by comparing the forecasts with actual demand.

5. The petitions in the *ARMIS Reconsideration Order* raised two issues regarding the demand data. First, Pacific Bell and USTA state that the instructions for common line terminating demand must be revised because the common line terminating rate element is scheduled to be eliminated on January 1, 1988.[9] USTA urges the Commission to work with the industry to develop a revision that can be readily implemented by its members for calculating demand data. Second, Pacific Bell suggests that Table II be revised to allow for prior period adjustments. It argues that such a revision would ensure that the data are consistent with the data used by the carriers in developing rates, and are consistent with the data provided to the National Exchange Carriers Association (NECA) on the NECA Form EC1051.[10]

6. With regard to the first issue, we note that the terminating rate has been extended to March 31, 1989. The disposition of the carrier common line termination rate after that date is currently pending in another proceeding.[11] Furthermore, the Commission has not adopted an alternative methodology for deriving demand. Therefore, we defer revision of our methodology for deriving terminating common line demand until such time as these issues are resolved.

7. With regard to the second issue, we agree that since Table II only requires demand data for the current reporting quarter, it does not provide a means for updating the demand data filed in previous Quarterly Reports. We note, however, that if we revised Table II to allow for updating previously filed demand data, the carriers would be required to file twenty-four columns of data every quarter, because the demand data are subject to revision for two years. Currently the carriers file, as part of their annual access tariff filings, demand data on an adjusted, rolling twenty-four month basis. We believe that, at this time, this annual tariff submission of the full twenty-four month demand series is sufficient. Therefore, we will continue to require demand data only for the current reporting quarter in Table II.

B. *Adjustments*

8. Column (d), "Other Adjustments", of the Quarterly Report has been subject to conflicting interpretations. As adopted in the *ARMIS Order*, it is intended to capture adjustments resulting from shared network facility arrangements (SNFA) and intra-company contracts.[12] BellSouth and GTE, however, interpret column (d) as inclusive of all adjustments (*e.g.*, those resulting from corrections of erroneous accounting data) that are neces-

sary to arrive at the amounts that are subject to the separations process. USTA recommends that this column be inclusive of all such adjustments, maintaining that this approach will result in consistent and accurate reporting and provide appropriate data for trend analysis without unnecessary burdens on the LECs. UTS also suggests that all adjustments be included in this column.

9. We believe that it would be confusing to record all adjustments in a single column. In order to preserve the integrity of adjustments for SNFA and intra-company transactions, we are adding a column called "All Other Adjustments" (column (e)) to reflect all additional adjustments, such as out-of-period adjustments. We are also revising the title of column (d) to read, "SNFA and Intra-company Adjustments."

C. ***Clarification of Booked / Adjusted Data***

10. BellSouth, GTE, USTA and UTS request clarification of the type of data to be reported in the Quarterly Report. They suggest that booked amounts be reported in the columns referring to total company and nonregulated operations and that adjusted amounts be reported in the columns referring to regulated operations.[13] USTA notes that booked data cannot be used to monitor rate of return without adjustment and that adjusted data alone would not be the correct measure for reporting in the columns relating to financial/accounting data.[14]

11. Parts 32 and 64 of the Commission's Rules require booked amounts. Parts 36 and 69, however, require adjusted amounts.[15] A combination of booked and adjusted data is, therefore, necessary to make the Quarterly Report consistent with the Commission's Rules. We accordingly clarify our instructions. Columns (b) and (c), which display accounting and financial data pursuant to Parts 32 and 64, should be reported as booked. Column (d), which displays adjustments resulting from SNFAs and intra-company contracts, should also be reported as booked. As discussed above, we have added column (e) to accommodate regulatory, out-of-period and all other adjustments necessary to arrive at the adjusted amounts subject to separations pursuant to Parts 36 and 69. The remaining columns must be reported as adjusted.

D. ***Average Net Investment***

12. USTA, Bell Atlantic, Pacific Bell, Southwestern Bell and UTS object to the calculation method for Average Net Investment prescribed by the *ARMIS Order*, stating that this method is inconsistent with the method prescribed on FCC Form 492 and for the development of interstate rates. Pacific Bell states that the Quarterly Report uses the average of beginning and ending investment account balances for the quarter while the Form 492 uses the average of the average monthly investment. These parties maintain that the Quarterly Report's instructions should be revised to be consistent with the Form 492 and that the Commission should delete line 49, Beginning Net Investment, and line 50, Ending Net Investment.

13. We agree with the petitioning parties that it is desirable to use the same methodology in the ARMIS and 492 Reports for calculating average net investment. The average of monthly averages used by the 492 Form is consistent with our Parts 36 and 69 Rules. Therefore, we change the instructions for calculating average net investment to read, "This amount shall be calculated by dividing the sum of the average net investments for each month in the reporting period by the number of months in the reporting period," and delete lines 49 and 50.

E. ***Cash Working Capital***

14. Pacific Bell and USTA note that the method for calculating cash working capital specified in the Quarterly Report, as adopted in the *ARMIS Order*, is inconsistent with the method required by the Commission's Rules for establishing a cash working capital allowance for inclusion in the rate base.[16] Both petitioners request that this amount be calculated in accordance with the Commission's Rules.

15. Cash working capital is an estimate of the average amount of investor supplied capital needed to supply funds for a carrier's day-to-day operations. The Quarterly Report defines cash working capital as the sum of accounts 1130 through 1160. Our rules do not permit this method to be used to establish cash working capital allowances for tariffs.[17] Accordingly, we agree with the carriers that this is an undesirable inconsistency and we resolve it by changing the ARMIS definition of cash working capital to be consistent with Section 65.820.

F. ***Rural Telephone Bank Stock (RTB Stock)***

16. RTB Stock represents equity investment in the Rural Telephone Bank.[18] LECs which obtain financing from the Rural Telephone Bank are required to make an equity investment in the bank in an amount equal to five percent of the principal amount of the loan.[19] Traditionally, the Commission has allowed this amount to be included in the rate base, and Part 36 of our Rules provides for the inclusion of RTB Stock in the separations process. However, Part 32 requires that the amount of investment in RTB Stock is booked to account 1402, which is not generally included in the rate base. USTA notes that we did not address this issue in the *ARMIS Order*.

17. The Commission did not specifically mention RTB Stock in the *ARMIS Order*, and, since the effect of this inadvertent omission excludes RTB Stock from the rate base, we revise the instructions to line 1770, FCC Investment Adjustment, to include investment in RTB Stock.

G. ***Inapplicable Data Fields***

18. Most of the parties requesting reconsideration of the *ARMIS Order* proceeding note that some fields on the Quarterly Report do not require data and request that we clarify the Commission's reporting requirements by identifying those fields. We agree that certain fields either cannot be populated with data because the data simply does not exist, or should not be populated because we have decided not to collect certain data. We have indicated such items on the Quarterly Report by populating the data fields in question with "N/A", thus indicating that certain fields need not be populated. *See* attached Appendix. However, any item not so designated must be populated. If the balance is zero, enter "0".

H. ***Misclassified Accounts***

19. USTA correctly observes that Special Charges and Fixed Charges are improperly classified on Appendix A. We move both line items and now properly classify them under the heading "Non-operating Items."

I. ***Other Issues***

20. In the *ARMIS Order*, a number of access elements are reported on an aggregated basis in the Quarterly Report. The five common line access elements are aggregated into a single column. Traffic sensitive access is disaggregated into three of the four access elements. These are switching, local transport and information. The billing and collections and interexchange (IX) services elements are aggregated into a single column under the title, "Non-access."

21. We have reviewed the initial filings of the Quarterly Report and have determined that these aggregates do not meet our monitoring needs. Additional data are necessary to make the data consistent with the other *ARMIS Order* reports and with the Commission's Rules. On our own motion, we make the following revisions to the Quarterly Report.

22. The five common line elements are to be reported as follows: Four of the elements, "Pay," "Inside Wire," "Base Factor Portion" and "CPE" appear as additional columns (Columns (i) through (l)). To accommodate the fifth element, "Common Line Support," which consists of two sub-elements, long-term and transitional, two line items (lines 1950 and 1960) have been added.[20]

23. Column (o) has been added to report the equal access[21] portion of the traffic sensitive access categories in order to be consistent with the Tariff Review Plan.

24. We disaggregate non-access into Billing and Collection, which is a nonregulated service, and into IX, which is a regulated service, (columns (u) and (v)) so that it will be possible to monitor the amounts allocated to each of these services.[22]

25. A row for lifeline adjustments, and total columns for common line and traffic sensitive data has been added. Allowance for funds used during construction (AFUDC) is reclassified under non-operating items, rather than revenues, because it is not recognized as revenue for calculating rate of return.

IV. PAPERWORK REDUCTION ACT

26. The proposal contained herein is in compliance with the Paperwork Reduction Act of 1980 and imposes no substantive or material modification to the approved information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed in the Act.

V. ORDERING CLAUSE

27. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 201-205, 215, 219, and 220 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j) 201-205, 215, 219, and 220, that the form attached hereto IS ADOPTED, and that the modifications described herein ARE ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67 and 69 of the FCC's Rules), 2 FCC Rcd 6283 (1987) (*ARMIS Order*), *modified on recon.*, FCC 88-331, released October 14, 1988) (*ARMIS Reconsideration Order*).

[2] The Commission adopted four reports, one quarterly report and three annual reports. The Quarterly Report (*ARMIS Order*, Appendix A) collects highly aggregated financial data reflecting the results of accounting and cost allocation requirements prescribed in Parts 32, 64, 36 and 69. This report also includes a demand analysis table. The three annual reports provide more detailed coverage: the USOA Report (*ARMIS Order*, Appendix B) which shows the results of the carriers' total activities on an account by account basis; the Joint Cost Report (*ARMIS Order*, Appendix C) which shows the allocations to regulated and nonregulated activities, as required by Part 64, for those accounts that are involved in the ratemaking process; and the Access Report (*ARMIS Order*, Appendix D) which shows the results of the jurisdictional separations and access rules, by Part 36 category and Part 69 element.

[3] All LECs having revenues of $100 million or more per calendar year are required to file ARMIS reports pursuant to the *ARMIS Order*. In a related order, the Commission established an automated quarterly reporting form for AT&T patterned after the ARMIS Quarterly Report, and authorized the Chief, Common Carrer Bureau to adopt, for AT&T, suitably modified versions of the *ARMIS Order* reports. *See*, Elimination of FCC Form 901, Monthly Form Required from Telphone Companies, CC Docket 87-503, 3 FCC Rcd 6261 (1988). Automated reporting requirements for AT&T will be addressed by the Common Carrier Bureau in the near future.

[4] Petitions for Reconsideration were filed by: the Bell Atlantic Telephone Companies (Bell Atlantic); South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, and BellSouth Corporation (BellSouth); Contel Corporation (Contel); GTE Service Corporation (GTE); The Pacific Companies (Pacific Bell); Southwestern Bell Telephone Company (Southwestern Bell); The United States Telephone Association (USTA); United Telecommunications, Inc. (UTS); and Western Union. Oppositions were filed by Bell Atlantic, The New England Telephone and Telegraph Company and the New York Telephone Company (NYNEX), Pacific Bell and Western Union. Replies were filed by Bell Atlantic, BellSouth, USTA, UTS and Western Union.

[5] The *ARMIS Reconsideration Order* directed the Common Carrier Bureau to issue a revised version of each report by Public Notice. We issue the revised version of the Quarterly Report by Bureau Order to allow for a more extensive discussion of the changes than is appropriate in a Public Notice.

[6] *See* Section 0.291(b)(4) of the Commission Rules.

[7] *See ARMIS Reconsideration Order* at para. 18.

[8] The revised Quarterly Report differs in several respects from the Quarterly Report adopted in the *ARMIS Order*. Several line items and columns are moved or added because of misclassifications, omissions or inconsistency with our Rules. We have reorganized the format by renumbering the rows and relabeling the columns to improve the logical flow from Part 32 through Parts 64, 36 and 69. Unless otherwise indicated, row and column references are to the revised Quarterly Report as it appears in the attached Appendix.

[9] The petitions were filed with the Commission on October 26, 1987. At that time the terminating rate had not been extended to March 31, 1989. The instructions call for the calculation of terminating common line demand by dividing terminating revenue by the terminating rate.

[10] Form EC1051, Supplemental Pool Report, is used by telecommunications carriers to report carrier common line earned revenue to NECA on a monthly basis. The data are reported for the current reporting month and for the previous 23 months, including adjustments for past periods as necessary.

[11] *See* MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Dockets 78-72 and 80-286, 3FCC Rcd 4543 (1988).

[12] Intra-company contracts refers to contracts between affiliates.

[13] Booked amounts reflect the results of transactions as recorded in the books of account. These amounts are frequently adjusted for regulatory purposes to exlude or include amounts, as prescribed by the regulating authority.

[14] USTA Comments at 3.

[15] *See* Section 65.450.

[16] *See* Section 65.820(d).

[17] Amendment of Part 65 of the Commission's Rules and Regulations to Prescribe Components of the Rate Base and Net Income of Dominant Carriers, CC Docket 86-497, 3 FCC Rcd 269 (1988) *recon. pending*.

[18] The Rural Telephone Bank was established by Congress in 1971 to furnish assured and viable sources of supplementary financing to fill the capital needs of rural telephone systems. *See* 7 U.S.C. Section 921(a).

[19] 7 U.S.C. Section 946(d).

[20] *See* Section 69.501.

[21] *See* Petitions for Recovery of Equal Access and Network Reconfiguration Costs, *Memorandum Opinion and Order*, FCC 85-628, released, December 9, 1985.

[22] *See* Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers, *Report and Order*, CC Docket No. 84-800, 51 Fed. Reg. 1795, (Jan. 15, 1986) at footnote 21.

APPENDIX

This document provides the instructions for FCC Report 43-01, the ARMIS Quarterly Report, which was adopted by the Commission in CC Docket No. 86-182. The instructions consist of the following five sections, which are attached:

1. Reporting Procedures - details on the specific procedures to be followed when submitting this report to the Commission.

2. Report Definition - an illustration of the rows and columns to be reported and their definitions.

3. Automated Report Specifications - the detailed automated data processing (ADP) specifications for the automated report to be filed.

4. Paper Report Specifications - the page layout and detailed specifications for the paper report to be filed.

5. COSA Code Table - the list of four letter COSA codes (CO = Company, SA = Study Area).

A. Introduction

This document contains details on the specific procedures to be followed when submitting FCC Report 43-01, the ARMIS Quarterly Report, to the Commission.

B. General Information

1. FCC Report 43-01 was adopted by the Commission in the ARMIS Order, Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), CC Docket No. 86-182, 2 FCC Rcd 5770 (1987). The report is prescribed for every local exchange carrier with operating revenues for the preceding year in excess of $100 million.

2. Affected carriers shall file by March 31, June 30, September 30 and December 31 of each year the report for the previous calendar quarter. The initial report in this revised format will be filed by March 31, 1989 and will contain data for the fourth quarter of calendar year 1988.

3. The report shall be filed on a study area (jurisdiction) basis.

4. Carriers seeking proprietary treatment for some data must provide two versions of each paper and automated report. The Confidential Version must contain all the required information (Confidential Treatment Tables/Data Records are provided to identify confidential data). The Public Version should not include data for which the carrier is seeking proprietary treatment. The carrier should **prominently** label the paper report and the diskette containing information subject to a claim of confidentiality to prevent inadvertent disclosure.

5. Carriers not seeking proprietary treatment for any data should provide only one version of each paper report and diskette, and the paper report and the diskette should be labeled the Unrestricted Version.

6. The Confidential Treatment Tables/Data Records are to be included in all reports but are not a substitute for applying for confidential treatment with this Commission following established Commission procedures.

7. Each report and diskette must be clearly labeled to include the report number, company, study area, period, COSA code, version and submission number. The report number is 43-01, which identifies the filing as the ARMIS Quarterly Report. The period identifies the year and quarter covered by the data. See the attached COSA Code Table (CO = Company, SA = Study Area) for a list of companies and their respective COSAs. The version refers to whether the filing is the Confidential, Public or Unrestricted Version. The submission number is defined as follows: Submission 0 is for test data purposes only. Submission 1 is the first submission of a quarter's data. Higher numbers (2, 3, etc.) would be used if

needed for successive revisions to correct that quarter's submission.

8. All correspondence and pleadings shall identify the proceeding as CC Docket 86-182.

C. **Data Items That Are "Not Available" or Are "Withheld"**

1. The term "Not Available" is used below to refer only to those items which the Commission has ruled are not applicable to a particular row/column or are not required for a particular filing entity. The Confidential Version must contain values for all of the data items except those items which are "Not Available." If, in addition to the required study area reports, a carrier submits a report which combines data for more than one study area, and this report includes a field such as a sum, a ratio, or a percentage that cannot be computed completely and accurately because it relies on another item which the Commission has ruled is a "Not Available" item, then that field is also considered to be "Not Available."

2. The term "Withheld" is used below to refer only to those items for which the carrier has applied for confidential treatment with the Commission and is only applicable to the Public Version. If a field such as a sum, a ratio or a percentage relies on an item or items which have been withheld and that field is not also withheld, then it must include the withheld amount. For example, a carrier could withhold the individual values for two of three numbers which are totaled. If the carrier does not also apply for confidential treatment for the total, then that total must be the sum of all three numbers, not just the one which was not withheld. The Public Version must contain values for all of the data items except those items which are "Not Available" or those items which have been "Withheld."

3. See paragraph C.5 in the attached Automated Report Specifications and paragraph C.2 in the attached Paper Report Specifications for data entry conventions for these items.

D. **Where to File**

1. Carriers submitting FCC Report 43-01 should consult the schedule below which details the number of copies required and the location to which those copies should be delivered.

2. Carriers are reminded that they must serve a copy of either the Unrestricted Version or the Public Version of both the paper report and the automated report (diskette) on the FCC's contractor for public records duplication, International Transcription Services, Inc., (ITS). These copies should be mailed to the attention of Wilbur Thomas of ITS at Suite 140, 2100 M Street, N.W., Washington, D.C. 20037 or delivered to ITS in Room 246 at FCC Headquarters, 1919 M Street, N.W., Washington, D.C. 20036.

NUMBER OF COPIES

FOR CARRIERS SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Confidential Paper Report	Confidential Automated Report (diskette)	Public Paper Report	Public Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-	-	-
FCC Common Carrier Bureau Accounting & Audits Division 2000 L Street, N.W. Washington, D.C. 20554	1	1	1	1	1
ITS - Room 246 ATTN: Wilbur Thomas 1919 M Street, N.W. Washington, D.C. 20036	1	-	-	1	1

FOR CARRIERS NOT SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Unrestricted Paper Report	Unrestricted Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-
FCC Common Carrier Bureau Accounting & Audits Division 2000 L Street, N.W. Washington, D.C. 20554	1	1	1
ITS - Room 246 ATTN: Wilbur Thomas 1919 M Street, N.W. Washington, D.C. 20036	1	1	1

E. **Footnotes**

1. If any data for the current period differs materially from that for the previous period or the corresponding period of the preceding year and the difference is not self-explanatory but was caused by unusual circumstances not explained in a previous report, then include footnote text to explain the occasioning facts.

2. This footnote text must be included in the Footnote Text Records and the Footnote Table as specified in the attached Automated Report Specifications and the attached Paper Report Specifications.

F. **Errata**

1. Carriers are under a legal obligation to correct any erroneous data discovered in FCC Report 43-01. Submissions containing corrected data must include references to indicate which data items were corrected since the previous submission.

2. These references must be included in the Erratum Records and the Erratum Table as specified in the attached Automated Report Specifications and the attached Paper Report Specifications.

G. **Certification**

1. Carriers must certify the accuracy of the data submitted in FCC Report 43-01 by including a signed certification statement as the last page of the paper report.

2. The text of the certification statement is included on page 21 of the attached Paper Report Specifications.

H. **Waivers**

1. If a carrier determines that it will be unable to provide data required by FCC Report 43-01, it must file an application for waiver with the Commission following established Commission procedures. All such requests from a carrier should be included in a single application. The application must demonstrate good cause for reporting a different or lower level of detail and indicate how these deficiencies will be corrected.

2. Carriers are strongly encouraged to comply with the requirements. Omission of individual data items or entries, without request for waiver, is unacceptable. One reason that compliance with the full requirements is so important is that omission of any single data entry by any carrier will jeopardize the accuracy of aggregate industry information.

I. Public Information

1. The Public or Unrestricted Versions of the paper reports filed as Report 43-01 may be examined by the public from 9:00 to 11:00 a.m. and from 2:00 to 4:00 p.m., Monday through Friday, in Room 812, 2000 L Street, N.W., Washington, D.C.

2. Copies of the Public or Unrestricted Versions of the paper or automated reports filed as FCC Report 43-01 may be obtained from the FCC's contractor for public records duplication, ITS. Parties should contact Wilbur Thomas of ITS at (202) 857-3800.

For further information regarding these procedures, contact:

Adrianne Brent
FCC Common Carrier Bureau
Accounting & Audits Division
(202) 634-1861

Approved by OMB
3060-0395
Expires 10/31/90
Estimated Average Burden Hours Per Response: 115 hours

SUMMARY

This document provides the Report Definition for FCC Report 43-01, the ARMIS Quarterly Report, and lists the revenue, revenue requirement, and demand data which must be provided quarterly by study area. It contains the following:

	Pages
Table I - Cost and Revenue Table	2 and 3
Table II - Demand Analysis Table	4
Table I Row Instructions	5 thru 8
Table I Column Descriptions	9 thru 11
Table II Demand Analysis Table Definitions	12 and 13
Certification	14

All monetary figures must be rounded to the nearest thousand dollars. All rate of return data fields (Rate of Return and Rate of Return including Refund) must be entered in percent and must be rounded to 2 decimal places. All minutes of use figures must be rounded to the nearest thousand; all access line figures must be provided to the nearest whole number.

Items which need not be reported because they do not apply are designated by N/A. All other fields must be populated. If there are no data applicable to a given field, enter zero.

Do not include explanatory notes in the transmittal letter; such notes must be included in the Footnotes section of the filing.

NOTICE: The ARMIS Quarterly Report collects highly aggregated financial data reflecting the results of accounting and cost allocation requirements prescribed in Parts 32, 64, 36 and 69. This report also includes a demand analysis table containing interstate access demand data. The ARMIS Quarterly Report specifies information requirements in a consistent format and is essential to the FCC to monitor revenue requirements, rate of return, jurisdictional separations and access charges. Your response is mandatory.

Public reporting burden for this collection of information is estimated to average 115 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Federal Communications Commission, Office of Managing Director, Washington DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OM
3060-0181
Expires 10/31/9

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From xxxx YYYY To xxxx YYYY
COSA: xxxx

xxxxxxxxxx
SUBMISSION
TABLE I

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification (a)	Total (b)	Months (c)	SWBTA and Intra-co. Adjustments (d)	All Other Adjustments (e)	Subject to Separations (f)	State (g)	Interstate (h)	Common Line: Pay (i)	Common Line: Inside Wire (j)	Common Line: BFP (k)	Common Line: CPE (l)	Common Line: [illegible] (m)
	Revenues												
1010	Network Access		N/A										
1020	Local Network Services		N/A										
1030	Toll Network Services		N/A										
1040	Miscellaneous												
1050	Settlements		N/A										
1060	Uncollectibles												
1090	Net Revenues												
	Expenses												
1110	Plant Specific												
1120	Plant Non-Specific												
1130	Customer Operations Marketing												
1140	Customer Operations Services												
1150	Access												
1160	Corporate Operations												
1170	Depreciation/Amortization												
1180	FCC Expense Adjustment	N/A	N/A	N/A	N/A	N/A	N/A						
1190	Total Operating Expenses												
	Other Operating Items												
1290	Other Operating Income/Losses												
	Non-operating Items												
1310	Extraordinary Items												
1320	AFUDC												
1330	Special Charges												
1340	Fixed Charges												
1350	All Other Non-operating Items												
1360	FCC Non-operating Adjustment	N/A	N/A	N/A	N/A	N/A	N/A						
1390	Total Non-operating Items												
	Other Taxes												
1410	State and Local Income												
1420	Other State and Local												
1490	Total Other Taxes												
	FIT												
1510	IBS Income Adjustment			N/A	N/A								
1520	FCC Taxable Income Adjustment	N/A	N/A	N/A	N/A	N/A	N/A						
1530	ITC Amortization												
1540	FCC ITC Adjustment	N/A	N/A	N/A	N/A	N/A	N/A						
1590	Net FIT												
	Plant-in-Service												
1610	Support Plant												
1620	COE-Switching												
1630	COE-Transmission												
1640	Cable and Wire Facilities												
1650	Information Orig./Term. Equipment												
1660	Amortizable Assets												
1690	Total Plant												
	Other Investments												
1710	Property Held for Future Use		N/A										
1720	Plant Under Construction												
1730	Plant Acquisition Adjustment			N/A	N/A								
1740	Other Deferred Charges												
1750	Material and Supplies												
1760	Cash Working Capital	N/A	N/A	N/A									
1770	FCC Investment Adjustment	N/A	N/A	N/A	N/A	N/A	N/A						
1790	Total Other Investments												
	Reserves												
1810	Accumulated Depreciation												
1820	Accumulated Amortization												
1830	Deferred FIT												
1840	Customer Deposits					N/A							
1850	Other Accrued Liabilities												
1860	Other Deferred Credits												
1870	All Other Reserve Items												
1880	FCC Reserve Adjustment	N/A	N/A	N/A	N/A	N/A	N/A						
1890	Total Reserves												
	Return Data												
1910	Average Net Investment			N/A									
1915	Net Return	N/A	N/A	N/A	N/A	N/A	N/A						
1920	Rate of Return	N/A	N/A	N/A	N/A	N/A	N/A						
1925	FCC Ordered Refund	N/A	N/A	N/A	N/A	N/A	N/A						
1930	Net Return Including FCC Refund	N/A	N/A	N/A	N/A	N/A	N/A						
1935	Rate of Return (including refund)	N/A	N/A	N/A	N/A	N/A	N/A						
	Miscellaneous												
1950	Common Line Support-Long Term	N/A	N/A	N/A	N/A	N/A	N/A	N/A					
1960	Common Line Support-Transitional	N/A	N/A	N/A	N/A	N/A	N/A	N/A					
1970	Lifeline Adjustment	N/A	N/A	N/A	N/A	N/A							
1980	Universal Service Fund	N/A	N/A	N/A	N/A	N/A							

FCC REPORT 43-01
ANNUAL QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From xxxx YYYY To xxxx YYYY
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	Traffic Sensitive					Special Access	Total Access	Billing & Collection	IX
		Switching	Basic Access	Transport	Information	Total				
	(a)	(b)	(c)	(d)	(g)	(f)	(a)	(t)	(u)	(v)
	Revenues									
1010	Network Access								N/A	N/A
1020	Local Network Services									
1030	Toll Network Services									
1040	Miscellaneous									
1050	Settlements									
1060	Uncollectibles									
1099	Net Revenues									
	Expenses									
1110	Plant Specific									
1120	Plant Non-Specific									
1130	Customer Operations Marketing									
1140	Customer Operations Services									
1150	Access								N/A	N/A
1160	Corporate Operations									
1170	Depreciation/Amortization									
1180	FCC Expense Adjustment									
1190	Total Operating Expenses									
	Other Operating Items									
1290	Other Operating Income/Losses									
	Non-operating Items									
1310	Extraordinary Items									
1320	AFUDC									
1330	Special Charges									
1340	Fixed Charges									
1350	All Other Non-operating Items									
1360	FCC Non-operating Adjustment									
1390	Total Non-operating Items									
	Other Taxes									
1410	State and Local Income									
1420	Other State and Local									
1490	Total Other Taxes									
	FIT									
1510	FIT Income Adjustment									
1520	FCC Taxable Income Adjustment									
1530	ITC Amortization									
1540	FCC ITC Adjustment									
1590	Net FIT									
	Plant-in-Service									
1610	Support Plant									
1620	COE-Switching									
1630	COE-Transmission									
1640	Cable and Wire Facilities									
1650	Information Orig./Term. Equipment									
1660	Amortizable Assets									
1690	Total Plant									
	Other Investments									
1710	Property Held for Future Use									
1720	Plant Under Construction									
1730	Plant Acquisition Adjustment									
1740	Other Deferred Charges									
1750	Material and Supplies									
1760	Cash Working Capital									
1770	FCC Investment Adjustment									
1790	Total Other Investments									
	Reserves									
1810	Accumulated Depreciation									
1820	Accumulated Amortization									
1830	Deferred FIT									
1840	Customer Deposits									
1850	Other Accrued Liabilities									
1860	Other Deferred Credits									
1870	All Other Reserve Items									
1880	FCC Reserve Adjustment									
1890	Total Reserves									
	Return Data									
1910	Average Net Investment								N/A	N/A
1915	Net Return								N/A	N/A
1920	Rate of Return								N/A	N/A
1925	FCC Ordered Refund								N/A	N/A
1930	Net Return Including FCC Refund								N/A	N/A
1935	Rate of Return (including refund)								N/A	N/A
	Miscellaneous									
1950	Common Line Support-Loop Term	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1960	Common Line Support-Transitional	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
197C	Lifeline Adjustment									
1980	Universal Service Fund									

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx

TABLE II - DEMAND ANALYSIS TABLE
(Minutes in thousands, Lines in whole numbers)

MONTHLY DATA

Row	Classification	Month 1	Month 2	Month 3
	(a)	(b)	(c)	(d)
	COMMON LINE DEMAND-MOU			
	Premium:			
2010	Originating			
2020	Terminating			
	Non-Premium:			
2030	Originating			
2040	Terminating			
	SWITCHED TRAFFIC SENS. DEMAND-MOU			
2050	Premium			
2060	Non-Premium			

QUARTERLY DATA

Row	Classification	Quarter x
	(aa)	(ab)
	COMMON LINE DEMAND	
	Carrier Common Line:	
2070	Originating	
2080	Terminating	
2090	Single Line Business C. P. T.	
2100	Residence CPT Lifeline	
2110	Residence CPT Non-Lifeline	
2120	Multiline Business	
2130	Centrex Co and CTX Like Lines	
2140	Special Access Lines Subject to Surcharge	
2150	Total Billable Access Lines	

Table I - ROW INSTRUCTIONS

Each row is an element related to a study area's revenue or revenue requirement.

Row	Item Description
	Revenues
1010.	Network Access - The total of accounts 5081 through 5084.
1020.	Local Network Services - The total of accounts 5001 through 5060.
1030.	Toll Network Services - The total of accounts 5110, 5111, 5112 and 5121 through 5160.
1040.	Miscellaneous - The total of accounts 5230 through 5250, 5261 through 5264, 5270 and 7991.
1050.	Settlements - The total of accounts 5069, 5129, 5169 and 5269.
1060.	Uncollectibles - The total of accounts 5301 and 5302.
1090.	Net Revenues - The total of lines 1010 through 1060.
	Expenses
1110.	Plant Specific - The total of accounts 6112 through 6116, 6121 through 6124, 6211 through 6220, 6231, 6232, 6311 through 6362, and 6411 through 6441.
1120.	Plant Nonspecific - The total of accounts 6511, 6512 and 6531 through 6535.
1130.	Customer Operations Marketing - The total of accounts 6611 through 6613.
1140.	Customer Operations Services - The total of accounts 6621 through 6623.
1150.	Access - Account 6540.
1160.	Corporate Operations - The total of accounts 6711, 6712, 6721 through 6728 and 6790.
1170.	Depreciation/Amortization - The total of accounts 6561 through 6565.
1180.	FCC Expense Adjustment - This amount shall contain the net of: (1) expense and other tax items which the Commission has expressly allowed for ratemaking purposes; and (2) expense and other tax items which the Commission has expressly excluded for ratemaking purposes.
1190.	Total Operating Expenses - The total of lines 1110 through 1180.
	Other Operating Items
1290.	Other Operating Income/Losses - This amount shall contain the net of accounts 7110 through 7160, 7910 and 7990.

Non-operating Items

1310. Extraordinary Items - The total of accounts 7610 and 7620.

1320. Allowance for Funds Used During Construction - The balance of account 7340.

1330. Special Charges - The balance of account 7370.

1340. Fixed Charges - The total of accounts 7510 through 7540.

1350. All Other Non-operating Items - The total of accounts 7310, 7320, 7330, and 7360.

1360. FCC Non-operating Adjustment - This amount shall contain the net of: (1) non-operating items which the Commission has expressly allowed for ratemaking purposes; and (2) non-operating items which the Commission has expressly excluded for ratemaking purposes.

1390. Total Non-operating Items - The total of lines 1310 through 1360.

Other Taxes

1410. State and Local Income - The total of accounts 7230 and the appropriate portion of 7250 for columns (b) through (e). Calculate this amount for the remaining columns pursuant to Section 36.412.

1420. Other State and Local - The total of accounts 7240 and the appropriate portion of account 7250 for columns (b) through (e). Calculate this amount for the remaining columns pursuant to Section 36.412.

1490. Total Other Taxes - The total of lines 1410 and 1420.

Federal Income Taxes

1510. IRS Income Adjustment - This amount is the difference between taxable income reported for IRS purposes and the taxable income shown in accordance with Part 32.

1520. FCC Taxable Income Adjustment - This shall contain the net of: (1) taxable income not included above which the Commission has expressly allowed for ratemaking purposes; and (2) taxable income included above which the Commission has expressly excluded for ratemaking purposes.

1530. Investment Tax Credit Amortization - The balance of account 7210.

1540. FCC Investment Tax Credit Adjustment - This shall contain the net of: (1) ITC not included above which the Commission has expressly allowed for ratemaking purposes; and (2) the ITC included above which the Commission has expressly excluded for ratemaking purposes.

1590. Net Federal Income Taxes - The applicable total of lines 1510 through 1540.

Plant-in-Service

1610. Support Plant - The total of accounts 2111 through 2124.

1620. Central Office Equipment-Switching - The total of accounts 2211 through 2215 and 2220.

1630. Central Office Equipment-Transmission - The total of accounts 2231 and 2232.

1640. Cable and Wire Facilities - The total of accounts 2411 through 2441.

1650. Information Origination/Termination Equipment - The total of accounts 2311 through 2362.

1660. Amortizable Assets - The total of accounts 2681, 2682 and 2690.

1690. Total Plant - The total of lines 1610 through 1660.

Other Investments

1710. Property Held for Future Telecommunications Use - The balance of account 2002.

1720. Telecommunications Plant Under Construction - The total of accounts 2003 and 2004.

1730. Plant Acquisition Adjustment - The balance of account 2005.

1740. Other Deferred Charges - The balance of accounts 1438, 1439, and 1500.

1750. Material and Supplies - The balance of account 1220.

1760. Cash Working Capital - This amount equals that portion of investment required to meet current expenses. The calculation of this amount shall take into account revenue and expense items which are received or paid for before the service is rendered and expense items received or disbursed after the service is rendered. This amount must be developed from a lead-lag study pursuant to CC Docket 86-497.

1770. FCC Investment Adjustment - This amount shall contain the net of: (1) investment items not included above, such as investment in Rural Telephone Bank Stock, which the Commission has expressly allowed for ratemaking purposes; and (2) investment items included above which the Commission has expressly excluded for ratemaking purposes.

1790. Total Other Investments - The total of lines 1710 through 1770.

Reserves

1810. Accumulated Depreciation - The total of accounts 3100 and 3200.
1820. Accumulated Amortization - The total of accounts 3410, 3420, 3500 and 3600.
1830. Deferred Federal Income Taxes - The total of accounts 4100 and 4340.
1840. Customer Deposits - The total of accounts 4030 and 4040.
1850. Other Accrued Liabilities - The balance of account 4120.
1860. Other Deferred Credits - The balance of account 4360.
1870. All Other Reserve Items - The balance of account 4370.
1880. FCC Reserve Adjustment - This amount shall contain the net of: (1) reserve items not included above which the Commission has expressly included for ratemaking purposes; and (2) reserve items included above which the Commission has expressly excluded for ratemaking purposes.
1890. Total Reserves - The total of lines 1810 through 1880.

Return Data

1910. Average Net Investment - This amount shall be calculated by dividing the sum of the average net investments for each month in the reporting period by the number of months in the reporting period.
1915. Net Return - For the BOCs this amount is line 1090 less lines 1190, 1290, 1390, 1490 and 1590. For the other LECs this amount is line 1090 less lines 1190, 1290, 1390, 1490 and 1590, plus line 1320.
1920. Rate of Return - Line 1915 divided by line 1910, multiplied by 400.
1925. FCC Ordered Refund - This amount should be developed in accordance with CC Docket 84-800, Phase I.
1930. Net Return Including FCC Refund - Line 1915 less line 1925.
1935. Rate of Return Including FCC Refund - Line 1930 divided by line 1910, multiplied by 400.

Miscellaneous

1950. Common Line Support-Long Term - Enter the amount of long term support received or disbursed pursuant to Part 69.112(a).
1960. Common Line Support-Transitional - Enter the amount of transitional support received or disbursed pursuant to Part 69.112(b).
1970. Lifeline Adjustment - Enter this amount pursuant to Part 36.701.
1980. Universal Service Fund - Carriers with higher than average non-traffic-sensitive loop costs must report their interstate allocation, as reported to NECA for this reporting period, on this line.

TABLE I - COLUMN DESCRIPTIONS

Each column is a cost category or access element specified in our Rules.

Columns (b) through (e) shall be reported as booked. The remaining columns shall be reported as adjusted.

Column	Description
b.	Total - This amount reflects the operating results for each of the rows itemized in this report, and includes all regulated and nonregulated company operations for each line item. These amounts are represented prior to separation between state and interstate jurisdictions.
c.	Nonregulated - This reflects the amount of each item pertaining to nonregulated activities in compliance with Docket 86-111.
d.	SNFA and Intra-company Adjustments - This amount reflects adjustments made to each item for costs related to shared network facility arrangements and intra-company subsidiary contracts.
e.	All Other Adjustments - This amount reflects all remaining adjustments, such as prior period adjustments, necessary to arrive at the amount subject to separation.
f.	Subject to Separations - This mount reflects that portion of each line item which must be allocated between state and interstate jurisdictions (column (b) less columns (c), (d) and (e).
g.	State - This amount reflects that portion of each line item that is allocated to the state jurisdiction for which this schedule is being filed, pursuant to Part 36 of our Rules. The cost of detariffed CPE shall be entered in this column pursuant to Part 36.142.
h.	Interstate - This amount reflects that portion of each line item allocated to the interstate jurisdiction for which this schedule is being filed, pursuant to Part 36 of our Rules. Common Line - These amounts reflect those portions of each line item applicable to carrier common line charges. A carrier common line charge is assessed upon all interexchange carriers who use local exchange common line facilities for the provision of interstate or foreign telecommunications services.
i.	Pay - This amount reflects that portion of each line item applicable to the pay telephone common line charges.
j.	Inside Wire - This amount reflects that portion of each line item applicable to common line charges associated with inside wire.

k. Base Factor Portion (BFP) - This amount reflects that portion of common line charges not assigned to Pay, CPE or Inside Wire pursuant to Part 69.

l. Customer Premises Equipment - This amount reflects that portion of each line item applicable to the CPE common line charges.

m. Total Common Line - The total of columns (i) through (l).

Traffic Sensitive - Plant that is engineered to handle anticipated volumes of calls.

n. Switching - This amount reflects that portion of each line item associated with connection of toll lines to toll lines, or toll lines to local central offices, exclusive of equal access.

o. Equal Access - This amount includes only initial incremental expenditures for hardware and other equipment, and initial incremental presubscription costs related to the provision of equal access which would not be required absent the provision of equal access.

p. Transport - This amount reflects that portion of each line item applicable to charges assessed upon all interexchange carriers who use switching or transport facilities that are apportioned to the transport element or elements for purposes of apportioning net investment.

q. Information - This amount reflects that portion of each line item applicable to charges assessed upon all interexchange carriers who are connected to assistance boards through interexchange directory assistance trunks.

r. Total Traffic Sensitive - The total of columns (n) through (q).

s. Special Access - This amount reflects that portion of each line item applicable to the total of all sub-elements that have been established for the use of equipment or facilities assigned to the Special Access element for purposes of apportioning net investment.

t. Total Access - The total of columns (m), (r) and (s).

u. Billing and Collection - This amount reflects that portion of each line item applicable to Billing and Collection services.

v. Interexchange (IX) - This amount reflects that portion of each line item applicable to Interexchange services.

TABLE II - DEMAND ANALYSIS TABLE

DEFINITIONS

Originating minutes of use (MOU) is a measurement of traffic on originating MTS and MTS-like common lines.

Terminating MOU is a measurement of traffic on terminating MTS and MTS-like, originating 800, terminating outWATS, originating open-end-FX and terminating open-end-FX common lines.

Premium carrier common line (CCL) MOU is a measurement of Feature Group A (FGA) and Feature Group B (FGB) traffic originating from or terminating at offices converted to equal access, plus all Feature Group C (FGC), Feature Group D (FGD), and interstate/intraLATA MOU, excluding closed-end WATS and WATS type MOU.

Non-Premium CCL MOU is a measurement of FGA and FGB access MOU originating and/or terminating at offices not converted to equal access.

Rows 2010 through 2060 of this table should contain monthly details of quarterly data. Rows 2070 through 2150 should be reported quarterly.

QUARTERLY REPORTING WITH MONTHLY DETAILS

Row	DESCRIPTION
2010.	Originating Premium CCL MOU is calculated by dividing the originating premium CCL revenue reported to the pool by the originating premium CCL rate.
2020.	Terminating Premium CCL MOU is calculated by dividing the terminating premium CCL revenue reported to the pool by the terminating premium CCL rate.
2030.	Originating Non-Premium CCL MOU is calculated by dividing the originating Non-Premium CCL revenues reported to the pool by the product of the originating premium rate and .45.
2040.	Terminating Non-Premium CCL MOU is calculated by dividing the terminating Non-Premium CCL revenues reported to the pool by the product of the terminating premium CCL rate and .45.
2050.	Total premium traffic sensitive MOU is calculated by dividing adjusted premium line termination revenues by the line termination rate.

Row	DESCRIPTION
2060.	Total Non-Premium traffic sensitive MOU is calculated by dividing the adjusted Non-Premium traffic sensitive line termination revenues by the product of the line termination rate and .45.

QUARTERLY DATA

2070.	Carrier common line chargeable originating minutes of use.
2080.	Carrier common line chargeable terminating minutes of use.
2090.	Single line business customer premises terminations (CPTs) subject to the single line business interstate subscriber line charge, excluding company official, mobile radiotelephone and public telephone. CPTs are commonly referred to as "main station equivalents" or "billable units". A CPT is a line termination at the customer premises, rather than at the central office.
2100.	Residence lifeline CPTs for which the interstate subscriber line charge is reduced or waived. The decision to implement a lifeline plan is left to the individual state commission.
2110.	Residence non-lifeline CPTs subject to the residence interstate subscriber line charge, excluding lifeline CPTs.
2120.	Multiline business CPTs subject to the multiline business interstate subscriber line charge including multiline semi-public lines, PBX trunks, Centrex CU trunks, hotel/motel LD trunks and Centrex CO lines ordered after July 27, 1983.
2130.	Centrex CO and CTX CO-like lines in service or ordered as of July 27, 1983.
2140.	Special access lines subject to a $25 surcharge, including WATS lines, as appropriate, after June 1, 1986.
2150.	Total billable access lines is the sum of rows 2090 through 2140.

CERTIFICATION

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

A. Introduction

This document contains the detailed automated data processing (ADP) specifications for the automated report to be filed as FCC Report 43-01, the ARMIS Quarterly Report.

B. General Format and Media

1. All data should be submitted on 5.25-inch double-sided double-density IBM-PC compatible diskettes.

2. All files should be coded in ASCII.

3. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

4. The file name for each file has seven components:

   a. the four letter COSA code (CO = Company, SA = Study Area, see attached COSA Code Table for a list of companies and their respective COSAs).
   b. the last two digits of the year which is covered by the data.
   c. the letter "Q".
   d. the number of the quarter which is covered by the data.
   e. a decimal point.
   f. the letter "P", "C", or "U" to indicate whether this is the Public version, the Confidential version, or the only (Unrestricted) version since all data is non-confidential.
   g. two digits (zero filled) for the submission number. Submission 0 is for test data purposes only. Submission 1 is for the first submission of a quarter's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that quarter's submission.

   For example, the file name for the Confidential Version of the initial quarterly report data file to be submitted by Illinois Bell to cover the first quarter of calendar year 1988, would be LBIL88Q1.C01:

LBIL	COSA for Illinois Bell
88	Data for calendar year 1988
Q	Quarterly Report data file
1	Data for the first quarter
.	decimal point
C	Confidential version
01	First submission of this quarter's data

5. A separate file should be prepared for each report. More than one file can be placed on the same diskette, as long as they cover the same period, version, and submission number.

C. Data Entry Conventions

1. Standard accounting procedures will apply in determining the nature of any entry (particular attention is called to the revenue item Uncollectibles; this figure, a debit entry, shall be entered as a "positive" number unless the balance therein reported is a credit). Entries of a reverse or contrary character shall be indicated by the placing of a minus sign in the column immediately preceding the numeric data, e.g. use -4, NOT - 4 or (4).

2. Begin each data record in column 1 and make each record the proper length as specified in the accompanying record layouts. Commas are used as delimiters between fields. All numeric fields are right justified and space filled, e.g. use ____123, NOT 123____. All non-numeric fields are enclosed in double quotation marks and are left justified and space filled within these quotation marks, e.g. use "John Doe ".

3. Give each record a unique record number, beginning with 1001 and incrementing by one, with no numbers skipped.

4. Do NOT include "$" or "%" or embedded commas or decimal points in any numeric data fields, except for rate of return data fields (Rate of Return and Rate of Return including Refund), which will include a decimal point but not a percent sign.

5. In any numeric data field for which data is "Not Available", enter -99999. On the "Public Version" diskette in any numeric data field for which the data is "Withheld", enter -88888. These entries should be formatted according to the format rules for the particular data field; e.g., in the Rate of Return field, -99999 would be entered as -99999.00

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all monetary figures must be rounded to the nearest thousand dollars.

2. All minutes of use (MOU) data to be provided in the Demand Analysis Table must be rounded to the nearest thousand.

3. All access line data (Single Line Business CPT, Residence CPT Lifeline, etc.) to be provided in the Demand Analysis Table must be provided to the nearest whole number.

4. All rate of return data fields (Rate of Return and Rate of Return including Refund) must be entered in percent and must be rounded to 2 decimal places.

Example: 12 2/3 percent should be entered as 12.67

E. Data Record Descriptions

The nine data record types are described below. See pages 5 through 18 for record layouts. The file will consist of one Type H1 record, followed by one Type L1 record, followed by 66 Type R2 records, followed by six Type M1 records, followed by nine Type Q1 records, followed by one or more Type C2 records, followed by zero or more Type F1 records, followed by zero or more Type E2 records, followed by one Type T1 record.

Record Type H1	Header Record	One Type H1 record per file. The first record of each file. Contains identifying data. See page 5 for record layout.
Record Type L1	Label Record	One Type L1 record per file. The second record of each file. Contains report number, carrier name, study area name, etc. See page 6 for record layout.
Record Type R2	Revenue Requirement Data Record	66 Type R2 records per file. One record for each of the 66 rows shown on Pages 2, 3 & 5 - 8 of the accompanying Report Definition. Each record contains data values for that particular revenue or revenue requirement element broken out by the cost categories and access elements shown on Pages 2, 3 & 9 - 11 of the Report Definition. See pages 7 - 9 for record layout.
Record Type M1	Demand Analysis Monthly Data Record	Six Type M1 records per file. One record for each of the 6 rows of monthly demand analysis data shown on Pages 4, 12 & 13 of the accompanying Report Definition. Each record contains monthly details of minutes of use data. See page 10 for record layout.

Record Type Q1	Demand Analysis Quarterly Data Record	Nine Type Q1 records per file. One record for each of the 9 rows of quarterly demand analysis data shown on Pages 4 and 13 of the accompanying Report Definition. Each record contains quarterly minutes of use data and access line data. See page 11 for record layout.
Record Type C2	Confidential Treatment Record	One or more Type C2 records per file. Contains information to identify the data for which the carrier is seeking confidential treatment or to verify that the carrier is not seeking any confidential treatment. See pages 12 & 13 for record layout.
Record Type F1	Footnote Record	Optional. Zero or more Type F1 records per file. Contains explanatory footnote text. See page 14 & 15 for record layout.
Record Type E2	Erratum Record	Zero Type E2 records in the first submission of a quarter's data. One or more Type E2 records per file in revisions filed to correct that quarter's submission. Contains information to identify the data which was corrected in this submission. See pages 16 & 17 for record layout.
Record Type T1	Trailer Record	One Type T1 record per file. The last record of each file. Contains contact person, etc. See page 18 for record layout.

RECORD TYPE H1 - HEADER RECORD

Field	Item	Example	Position	Description
1	Record Number	1001	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (see attached COSA Code Table) Format: include quotation marks.
3	Record Type	"H1"	13-16	Always contains the letter H capitalized and the number 1 with no space between them. Format: include quotation marks.
4	File Name	"LBIL88Q1.C01"	18-31	The name of the ASCII file. Format: see page 1, paragraph B.4 above. include quotation marks.
5	Year	1988	33-36	The year covered by the data.
6	Quarter #	1	38	The quarter number covered by the data. 1 for January to March 2 for April to June 3 for July to September 4 for October to December
7	Data Entry Date	19880615	40-47	The date on which the data was last entered or revised. Format: YYYYMMDD.
8	Version	"C"	49-51	The version letter (P, C or U) capitalized (for Public, Confidential or Unrestricted) Format: include quotation marks.
9	Submission #	1	53-54	0 for test data purposes only. 1 for first submission of a quarter's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that quarter's submission. Format: right justified and space filled.
10	End of Record Code	"XQ"	56-59	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas.
The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3         4         5              . . . . .    Ruler line
12345678901234567890123456789012345678901234567890123456789    . . . . .    Ruler line
```

Sample record:

```
1001,"LBIL","H1","LBIL88Q1.C01",1988,1,19880615,"C", 1,"XQ"
```

RECORD TYPE L1 - LABEL RECORD

Field	Item	Example	Position	Description
1	Record Number	1002	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"L1"	13-16	Always contains the letter L capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Report Number	"FCC REPORT 43-01"	18-35	Always contains "FCC REPORT 43-01" capitalized. Format: include quotation marks.
5	Carrier	"Illinois Bell " (spaces until pos. 68)	37-68	Name of the carrier. Format: left justified and space filled. include quotation marks.
6	Study Area	"Illinois "	70-91	Name of the study area. Format: left justified and space filled. include quotation marks.
7	Period Covered	"Jan 1988 to Mar 1988"	93-114	Period covered by the data. Format: "mmm yyyy to mmm yyyy" include quotation marks.
8	End of Record Code	"XQ"	116-119	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
         1         2         3         4         5         6         7         8         9         0         1         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678
Sample record:
1002,"LBIL","L1","FCC REPORT 43-01","Illinois Bell                ","Illinois          ","Jan 1988 to Mar 1988","
```

RECORD TYPE R2 - REVENUE REQUIREMENT DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1009	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"R2"	13-16	Always contains the letter R capitalized and the number 2 with no space between them. Format: include quotation marks.
4	Row Number	1090	18-21	Row number as shown on the attached Paper Report Specifications. Valid range: 1010 to 1980 Format: right justified and space filled.
5	Column (b) data	81728 -OR- 12.00	23-31	This field contains the data corresponding to column (b) as shown on Pages 3 thru 16 of the attached Paper Report Specs. Format: right justified and space filled. Enter -99999 in integer rows and -99999.00 in percentage rows to indicate that the data is not available. Enter -88888 in integer rows and -88888.00 in percentage rows on the "public version" diskette to indicate that confidential treatment has been requested.
6	Column (c) data	5432	33-41	Column (c) data Format: see Field 5 above.
7	Column (d) data	2716	43-51	Column (d) data Format: see Field 5 above.
8	Column (e) data	2716	53-61	Column (e) data Format: see Field 5 above.
9	Column (f) data	70864	63-71	Column (f) data Format: see Field 5 above.
10	Column (g) data	5432	73-81	Column (g) data Format: see Field 5 above.
11	Column (h) data	65432	83-91	Column (h) data Format: see Field 5 above.
12	Column (i) data	1358	93-101	Column (i) data Format: see Field 5 above.

RECORD TYPE R2 - REVENUE REQUIREMENT DATA RECORD (continued)

Field	Item	Example	Position	Description
13	Column (j) data	1358	103-111	Column (j) data Format: see Field 5 above.
14	Column (k) data	1358	113-121	Column (k) data Format: see Field 5 above.
15	Column (l) data	1358	123-131	Column (l) data Format: see Field 5 above.
16	Column (m) data	5432	133-141	Column (m) data Format: see Field 5 above.
17	Column (n) data	2716	143-151	Column (n) data Format: see Field 5 above.
18	Column (o) data	2716	153-161	Column (o) data Format: see Field 5 above.
19	Column (p) data	5432	163-171	Column (p) data Format: see Field 5 above.
20	Column (q) data	5432	173-181	Column (q) data Format: see Field 5 above.
21	Column (r) data	16296	183-191	Column (r) data Format: see Field 5 above.
22	Column (s) data	5432	193-201	Column (s) data Format: see Field 5 above.
23	Column (t) data	27160	203-211	Column (t) data Format: see Field 5 above.
24	Column (u) data	19136	213-221	Column (u) data Format: see Field 5 above.
25	Column (v) data	19136	223-231	Column (v) data Format: see Field 5 above.

RECORD TYPE R2 - REVENUE REQUIREMENT DATA RECORD (continued)

Field	Item	Example	Position	Description
26	End of Record Code	"XQ"	233-236	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

If any data for the current period differs materially from that for the previous period or the corresponding period of the preceding year and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, add one or more Type F1 records (after the remaining Type R2, M1, Q1 and C2 records) containing footnote text to explain the occasioning facts.

```
         1         2         3         4         5         6         7         8         9
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012
Sample record:
1009,"LBIL","R2",1090,    81728,    5432,    2716,    2716,    70864,    5432,    65432,
```

```
         1         1         1         1         1         1         1         1         1
         0         1         2         3         4         5         6         7         8
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012
Continuation of sample record:
    1358,    1358,    1358,    1358,    5432,    2716,    2716,    5432,    5432,
```

```
         1         2         2         2         2
         9         0         1         2         3
12345678901234567890123456789012345678901234567890123456
Continuation of sample record:
   16296,    5432,    27160,    19136,    19136,"XQ"
```

RECORD TYPE M1 - DEMAND ANALYSIS MONTHLY DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1069	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"M1"	13-16	Always contains the letter M capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	2010	18-21	Row number as shown on Page 17 of the attached Paper Report Specifications. Valid range: 2010 to 2060 Format: right justified and space filled.
5	Data for the first month of the quarter	5432	23-31	This field contains the data corresponding to the first month of the quarter. Format: right justified and space filled. Enter -99999 to indicate that the data is not available. Enter -88888 on the "public version" diskette to indicate that confidential treatment has been requested.
6	Data for the second month of the quarter	5654	33-41	This field contains the data corresponding to the second month of the quarter. Format: see Field 5 above.
7	Data for the third month of the quarter	5876	43-51	This field contains the data corresponding to the third month of the quarter. Format: see Field 5 above.
8	End of Record Code	"XQ"	53-56	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

If any data for the current period differs materially from that for the previous period or the corresponding period of the preceding year and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, add one or more Type F1 records (after the remaining Type M1, Q1 and C2 records) containing footnote text to explain the occasioning facts.

```
        1         2         3         4         5
12345678901234567890123456789012345678901234567890123456
Sample record:
1069,"LBIL","M1",2010,     5432,     5654,     5876,"XQ"
```

RECORD TYPE Q1 - DEMAND ANALYSIS QUARTERLY DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1075	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"Q1"	13-16	Always contains the letter Q capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	2070	18-21	Row number as shown on Page 17 of the attached Paper Report Specifications. Valid range: 2070 to 2150. Format: right justified and space filled.
5	Quarterly data	5432	23-31	This field contains the data corresponding to the entire quarter. Format: right justified and space filled. Enter -99999 to indicate that the data is not available. Enter -88888 on the "public version" diskette to indicate that confidential treatment has been requested.
6	End of Record Code	"XQ"	33-36	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

If any data for the current period differs materially from that for the previous period or the corresponding period of the preceding year and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, add one or more Type F1 records (after the remaining Type Q1 and C2 records) containing footnote text to explain the occasioning facts.

```
         1         2         3
1234567890123456789012345678901234567
Sample record:
1075,"LBIL","Q1",2070,     5432,"XQ"
```

RECORD TYPE C2 - CONFIDENTIAL TREATMENT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1084	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"C2"	13-16	Always contains the letter C capitalized and the number 2 with no space between them. Format: include quotation marks.
4	Record Number (for the confidential data)	1003	18-21	This field contains the record number of the record which contains the data for which the carrier is seeking confidential treatment. If the request is for an entire column, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the confidential data appears. Format: include quotation marks. left justified and space filled.
6	Row Number	1010	30-33	This field contains the row number of the row which contains the confidential data as identified in the attached Paper Report Specs. If the request is for an entire column, enter 9999. Format: right justified and space filled.
7	Column Label	"C "	35-38	This field contains the column letter of the confidential data as identified in the attached Paper Report Specs. If the request is for an entire row, enter "ZZ". If the request is for more than one column but less than the entire row, then populate this field and as many as needed of fields 8 thru 26. If no confidential treatment is being requested, then enter " " in all of fields 7 thru 26. Format: include quotation marks. left justified and space filled.
8	Second Column Label	"G "	40-43	.....
9	Third Column Label	"Q "	45-48	. Fields 8 thru 26 are similar
.				. to Field 7 and are used
.				. when the request is for
.				. the same row and more than
.				. one column.
26	Twentieth Col. Label	"V "	130-133	..... Otherwise, enter " ".

RECORD TYPE C2 - CONFIDENTIAL TREATMENT RECORD (continued)

Field	Item	Example	Position	Description
27	End of Record Code	"XQ"	135-138	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
         1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789
Sample records:
1084,"LBIL","C2",1003,"I    ",1010,"C ","G ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1085,"LBIL","C2",1009,"I    ",1090,"C ","G ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1086,"LBIL","C2",9999,"I    ",9999,"U ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1087,"LBIL","C2",1069,"II   ",2010,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
```

```
1         1         1         1
0         1         2         3
0123456789012345678901234567890123456789
Continuation of sample records:
"  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","XQ"
```

RECORD TYPE F1 - FOOTNOTE TEXT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1088	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"F1"	13-16	Always contains the letter F capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Record Number (for the footnoted data)	1003	18-21	This field contains the record number of the record which contains the footnoted data. If the footnote pertains to an entire column, an entire table, or the entire submission, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the footnoted data appears. If the footnote pertains to an entire table, use "ZZZZ". Format: include quotation marks. left justified and space filled.
6	Row Number	1010	30-33	This field contains the row number of the row which contains the footnoted data as identified in the attached Paper Report Specifications. If the footnote pertains to an entire column, an entire table, or the entire submission, enter 9999. Format: right justified and space filled.
7	Column Label	"C "	35-38	This field contains the column letter of the footnoted data as identified in the attached Paper Report Specifications. If the footnote pertains to an entire row, an entire table, or the entire submission, enter "ZZ". Format: include quotation marks. left justified and space filled.

RECORD TYPE F1 - FOOTNOTE TEXT RECORD (continued)

Field	Item	Example	Position	Description
8	Footnote Number	1	40-41	The number of this particular footnote. Valid range: 1 to 99. Format: right justified and space filled.
9	Sequence Number	1	43-44	The sequence number of the record within the footnote. In other words, the order of the specific record in the sequence of records which, when combined, will provide the entire footnote. Valid range: 1 to 99. Format: right justified and space filled.
10	Footnote Text	"Footnote text " (spaces until pos. 102)	46-102	The text of the footnote or of the continuation line. Format: include quotation marks at the beginning and end of this field and left justify within these quotation marks.
11	End of Record Code	"XQ"	104-107	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
                                                                                                                  I
         1         2         3         4         5         6         7         8         9         0
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567
Sample records:
1088,"LBIL","F1",1003,"I   ",1010,"C ", 1, 1,"Footnote text for footnote 1                                  ","XQ"
1089,"LBIL","F1",1003,"I   ",1010,"C ", 1, 2,"continuation text for footnote 1                              ","XQ"
1090,"LBIL","F1",1003,"I   ",1010,"C ", 1, 3,"last line of footnote 1                                       ","XQ"
1091,"LBIL","F1",1027,"I   ",1410,"ZZ", 2, 1,"Footnote 2 pertains to all columns of Table I row 1410 ","XQ"
1092,"LBIL","F1",9999,"I   ",9999,"G ", 3, 1,"Footnote 3 pertains to all rows of Table I column G     ","XQ"
1093,"LBIL","F1",1069,"II  ",2010,"B ", 4, 1,"Footnote 4 pertains to Table II row 2010 column B       ","XQ"
```

RECORD TYPE E2 - ERRATUM RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1094	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"E2"	13-16	Always contains the letter E capitalized and the number 2 with no space between them. Format: include quotation marks.
4	Record Number (for the corrected data)	1003	18-21	This field contains the record number of the record which contains the data which was corrected in this submission. If an entire column, an entire table, or the entire submission was corrected, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the corrected data appears. If an entire table or submission was corrected, use "ZZZZ". Format: include quotation marks. left justified and space filled.
6	Row Number	1010	30-33	This field contains the row number of the of the row which contains the corrected data as identified in the attached Paper Report Specifications. If an entire column, an entire table, or the entire submission was corrected, enter 9999. Format: right justified and space filled.
7	Column Label	"C "	35-38	This field contains the column letter of the corrected data as identified in the attached Paper Report Specifications. If an entire row, an entire table, or the entire submission was corrected, enter "ZZ". If more than one column but less than the entire row was corrected, then populate this field and as many as needed of fields 8 thru 26. Format: include quotation marks. left justified and space filled.

RECORD TYPE E2 - ERRATUM RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"E "	40-43	.....
9	. Third Column Label	"G "	45-48	. Fields 8 thru 26 are similar
.				. to Field 7 and are used
.				. when the correction is in
.				. the same row and more than
.				. one column.
26	Twentieth Col. Label	"V "	130-133	..... Otherwise, enter " ".
27	Footnote Number	1	135-136	This field contains the footnote number that explains the correction. If there is no footnote, use a zero. Format: right justified and space filled.
28	End of Record Code	"XQ"	138-141	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
         1         2         3         4         5         6         7         8         9
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789
Sample records:
1094,"LBIL","E2",1003,"I   ",1010,"C ","G ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1095,"LBIL","E2",1009,"I   ",1090,"C ","G ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1096,"LBIL","E2",1027,"I   ",1410,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1097,"LBIL","E2",9999,"I   ",9999,"G ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1098,"LBIL","E2",1069,"II  ",2010,"B ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
```

```
1         1         1         1         1
0         1         2         3         4
01234567890123456789012345678901234567890123456789012345678901
Continuation of sample records:
"  ","  ","  ","  ","  ","  ","  ", 1,"XQ"
"  ","  ","  ","  ","  ","  ","  ", 0,"XQ"
"  ","  ","  ","  ","  ","  ","  ", 2,"XQ"
"  ","  ","  ","  ","  ","  ","  ", 3,"XQ"
"  ","  ","  ","  ","  ","  ","  ", 4,"XQ"
```

RECORD TYPE T1 - TRAILER RECORD

Field	Item	Example	Position	Description
1	Record Number	1099	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"T1"	13-16	Always contains the letter T capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Contact Person	"John Doe " (spaces until pos. 59)	18-59	The name of the person to contact if there are questions about the report. Format: include quotation marks.
5	Telephone #	"(202) 555-1212 x123 "	61-82	The Contact Person's telephone number. Format: include quotation marks.
6	End of Record Code	"XQ"	84-87	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

Sample record:

```
        1         2         3         4         5         6         7         8
12345678901234567890123456789012345678901234567890123456789012345678901234567

1099,"LBIL","T1","John Doe                                    ","(202) 555-1212 x123 ","XQ"
```

A. Introduction

This document contains the page layout and detailed specifications for the paper report to be filed as FCC Report 43-01, the ARMIS Quarterly Report.

B. General Instructions

1. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

2. The Ruler Lines included on the page layouts with the column titles are included only to assist the reader. Do not include ruler lines as lines in the report.

C. Data Entry Conventions

1. Standard accounting procedures will apply in determining the nature of any entry (e.g., the revenue item Uncollectibles, a debit entry, shall be entered as a "positive" number unless the balance therein reported is a credit). Entries of a reverse or contrary character shall be indicated by the placing of a minus sign in the column immediately preceding the numeric data, e.g., use -4, NOT - 4 or (4).

2. In any numeric data field for which the data is "Not Available", enter N/A. On the "Public Version" report in any numeric data field for which the data is "Withheld", enter W/H.

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all monetary figures must be rounded to the nearest thousand dollars.

2. All minutes of use (MOU) data to be provided in the Demand Analysis Table must be rounded to the nearest thousand.

3. All access line data (Single Line Business CPT, Residence CPT Lifeline, etc.) to be provided in the Demand Analysis Table must be provided to the nearest whole number.

4. All rate of return data fields (Rate of Return and Rate of Return including Refund) must be entered in percent and must be rounded to 2 places. Example: 12 2/3 percent should be entered as 12.67

E. **Page Layouts**

The nineteen page layouts are illustrated on pages 3 through 21. The paper report will consist of the following pages, in order:

	Illustrated on Page
Table I Pages 1.1 through 1.7.	3 - 9
Table I Pages 2.1 through 2.7.	10 - 16
Table II Page 1.	17
The Confidential Treatment Table (at least one page and as many pages as needed).	18
The Footnote Table (at least one page and as many pages as needed).	19
The Erratum Table (for submission number 2 or higher, as many pages as needed).	20
The Certification Page.	21

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 1.1 OF 2.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	Total	Nonreg.	SNFA and Intra-co. Adjustments	
	(a)	(b)	(c)	(d)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Revenues				
1010	Network Access		N/A		
1020	Local Network Services		N/A		
1030	Toll Network Services		N/A		
1040	Miscellaneous				
1050	Settlements		N/A		
1060	Uncollectibles				
1090	Net Revenues				
	Expenses				
1110	Plant Specific				
1120	Plant Non-Specific				
1130	Customer Operations Marketing				
1140	Customer Operations Services				
1150	Access				
1160	Corporate Operations				
1170	Depreciation/Amortization				
1180	FCC Expense Adjustment	N/A	N/A	N/A	
1190	Total Operating Expenses				
	Other Operating Items				
1290	Other Operating Income/Losses				
	Non-operating Items				
1310	Extraordinary Items				
1320	AFUDC				
1330	Special Charges				
1340	Fixed Charges				
1350	All Other Non-operating Items				
1360	FCC Non-operating Adjustment	N/A	N/A	N/A	
1390	Total Non-operating Items				
	Other Taxes				
1410	State and Local Income				
1420	Other State and Local				
1490	Total Other Taxes				
	FIT				
1510	IRS Income Adjustment			N/A	
1520	FCC Taxable Income Adjustment	N/A	N/A	N/A	
1530	ITC Amortization				
1540	FCC ITC Adjustment	N/A	N/A	N/A	
1590	Net FIT				

If applicable:
THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE.
SEE THE CONFIDENTIAL TREATMENT TABLE FOR SPECIFIC INFORMATION.

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ARMIS QUARTERLY REPORT

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 1.2 OF 2.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	All Other Adjustments	Subject to Separations	State
	(a)	(e)	(f)	(g)
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789
	Revenues			
1010	Network Access			
1020	Local Network Services			
1030	Toll Network Services			
1040	Miscellaneous			
1050	Settlements			
1060	Uncollectibles			
1090	Net Revenues			
	Expenses			
1110	Plant Specific			
1120	Plant Non-Specific			
1130	Customer Operations Marketing			
1140	Customer Operations Services			
1150	Access			
1160	Corporate Operations			
1170	Depreciation/Amortization			
1180	FCC Expense Adjustment	N/A	N/A	N/A
1190	Total Operating Expenses			
	Other Operating Items			
1290	Other Operating Income/Losses			
	Non-operating Items			
1310	Extraordinary Items			
1320	AFUDC			
1330	Special Charges			
1340	Fixed Charges			
1350	All Other Non-operating Items			
1360	FCC Non-operating Adjustment	N/A	N/A	N/A
1390	Total Non-operating Items			
	Other Taxes			
1410	State and Local Income			
1420	Other State and Local			
1490	Total Other Taxes			
	FIT			
1510	IRS Income Adjustment	N/A		
1520	FCC Taxable Income Adjustment	N/A	N/A	N/A
1530	ITC Amortization			
1540	FCC ITC Adjustment	N/A	N/A	N/A
1590	Net FIT			

If applicable:
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ARMIS QUARTERLY REPORT

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I
PAGE 1.3 OF 2.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	Interstate	Common Line: Pay	Common Line: Inside Wire	
	(a)	(h)	(i)	(j)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Revenues				
1010	Network Access				
1020	Local Network Services				
1030	Toll Network Services				
1040	Miscellaneous				
1050	Settlements				
1060	Uncollectibles				
1090	Net Revenues				
	Expenses				
1110	Plant Specific				
1120	Plant Non-Specific				
1130	Customer Operations Marketing				
1140	Customer Operations Services				
1150	Access				
1160	Corporate Operations				
1170	Depreciation/Amortization				
1180	FCC Expense Adjustment				
1190	Total Operating Expenses				
	Other Operating Items				
1290	Other Operating Income/Losses				
	Non-operating Items				
1310	Extraordinary Items				
1320	AFUDC				
1330	Special Charges				
1340	Fixed Charges				
1350	All Other Non-operating Items				
1360	FCC Non-operating Adjustment				
1390	Total Non-operating Items				
	Other Taxes				
1410	State and Local Income				
1420	Other State and Local				
1490	Total Other Taxes				
	FIT				
1510	IRS Income Adjustment				
1520	FCC Taxable Income Adjustment				
1530	ITC Amortization				
1540	FCC ITC Adjustment				
1590	Net FIT				

If applicable:
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ARMIS QUARTERLY REPORT

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Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 1.4 OF 2.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

		Common Line		
Row	Classification	BFP	CPE	Total
	(a)	(k)	(l)	(m)
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789
	Revenues			
1010	Network Access			
1020	Local Network Services			
1030	Toll Network Services			
1040	Miscellaneous			
1050	Settlements			
1060	Uncollectibles			
1090	Net Revenues			
	Expenses			
1110	Plant Specific			
1120	Plant Non-Specific			
1130	Customer Operations Marketing			
1140	Customer Operations Services			
1150	Access			
1160	Corporate Operations			
1170	Depreciation/Amortization			
1180	FCC Expense Adjustment			
1190	Total Operating Expenses			
	Other Operating Items			
1290	Other Operating Income/Losses			
	Non-operating Items			
1310	Extraordinary Items			
1320	AFUDC			
1330	Special Charges			
1340	Fixed Charges			
1350	All Other Non-operating Items			
1360	FCC Non-operating Adjustment			
1390	Total Non-operating Items			
	Other Taxes			
1410	State and Local Income			
1420	Other State and Local			
1490	Total Other Taxes			
	FIT			
1510	IRS Income Adjustment			
1520	FCC Taxable Income Adjustment			
1530	ITC Amortization			
1540	FCC ITC Adjustment			
1590	Net FIT			

... Ruler Line

If applicable:
THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE.
SEE THE CONFIDENTIAL TREATMENT TABLE FOR SPECIFIC INFORMATION.

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

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Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 1.5 OF 2.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	Traffic Sensitive			
		Switching	EqualAccess	Transport	
	(a)	(n)	(o)	(p)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Revenues				
1010	Network Access				
1020	Local Network Services				
1030	Toll Network Services				
1040	Miscellaneous				
1050	Settlements				
1060	Uncollectibles				
1090	Net Revenues				
	Expenses				
1110	Plant Specific				
1120	Plant Non-Specific				
1130	Customer Operations Marketing				
1140	Customer Operations Services				
1150	Access				
1160	Corporate Operations				
1170	Depreciation/Amortization				
1180	FCC Expense Adjustment				
1190	Total Operating Expenses				
	Other Operating Items				
1290	Other Operating Income/Losses				
	Non-operating Items				
1310	Extraordinary Items				
1320	AFUDC				
1330	Special Charges				
1340	Fixed Charges				
1350	All Other Non-operating Items				
1360	FCC Non-operating Adjustment				
1390	Total Non-operating Items				
	Other Taxes				
1410	State and Local Income				
1420	Other State and Local				
1490	Total Other Taxes				
	FIT				
1510	IRS Income Adjustment				
1520	FCC Taxable Income Adjustment				
1530	ITC Amortization				
1540	FCC ITC Adjustment				
1590	Net FIT				

If applicable:
THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE.
SEE THE CONFIDENTIAL TREATMENT TABLE FOR SPECIFIC INFORMATION.

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

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Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 1.6 OF 2.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	Traffic Sensitive		Special Access
		Information	Total	
	(a)	(q)	(r)	(s)
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789
	Revenues			
1010	Network Access			
1020	Local Network Services			
1030	Toll Network Services			
1040	Miscellaneous			
1050	Settlements			
1060	Uncollectibles			
1090	Net Revenues			
	Expenses			
1110	Plant Specific			
1120	Plant Non-Specific			
1130	Customer Operations Marketing			
1140	Customer Operations Services			
1150	Access			
1160	Corporate Operations			
1170	Depreciation/Amortization			
1180	FCC Expense Adjustment			
1190	Total Operating Expenses			
	Other Operating Items			
1290	Other Operating Income/Losses			
	Non-operating Items			
1310	Extraordinary Items			
1320	AFUDC			
1330	Special Charges			
1340	Fixed Charges			
1350	All Other Non-operating Items			
1360	FCC Non-operating Adjustment			
1390	Total Non-operating Items			
	Other Taxes			
1410	State and Local Income			
1420	Other State and Local			
1490	Total Other Taxes			
	FIT			
1510	IRS Income Adjustment			
1520	FCC Taxable Income Adjustment			
1530	ITC Amortization			
1540	FCC ITC Adjustment			
1590	Net FIT			

If applicable:
THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE.
SEE THE CONFIDENTIAL TREATMENT TABLE FOR SPECIFIC INFORMATION.

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 1.7 OF 2.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	Total Access	Billing & Collection	IX	
	(a)	(t)	(u)	(v)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Revenues				
1010	Network Access		N/A	N/A	
1020	Local Network Services				
1030	Toll Network Services				
1040	Miscellaneous				
1050	Settlements				
1060	Uncollectibles				
1090	Net Revenues				
	Expenses				
1110	Plant Specific				
1120	Plant Non-Specific				
1130	Customer Operations Marketing				
1140	Customer Operations Services				
1150	Access		N/A	N/A	
1160	Corporate Operations				
1170	Depreciation/Amortization				
1180	FCC Expense Adjustment				
1190	Total Operating Expenses				
	Other Operating Items				
1290	Other Operating Income/Losses				
	Non-operating Items				
1310	Extraordinary Items				
1320	AFUDC				
1330	Special Charges				
1340	Fixed Charges				
1350	All Other Non-operating Items				
1360	FCC Non-operating Adjustment				
1390	Total Non-operating Items				
	Other Taxes				
1410	State and Local Income				
1420	Other State and Local				
1490	Total Other Taxes				
	FIT				
1510	IRS Income Adjustment				
1520	FCC Taxable Income Adjustment				
1530	ITC Amortization				
1540	FCC ITC Adjustment				
1590	Net FIT				

If applicable:
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FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 2.1 OF 2.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	Total	Nonreg.	SNFA and Intra-co. Adjustments
	(a)	(b)	(c)	(d)
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789
	Plant-in-Service			
1610	Support Plant			
1620	COE-Switching			
1630	COE-Transmission			
1640	Cable and Wire Facilities			
1650	Information Orig./Term. Equipment			
1660	Amortizable Assets			
1690	Total Plant			
	Other Investments			
1710	Property Held for Future Use		N/A	
1720	Plant Under Construction			
1730	Plant Acquisition Adjustment			N/A
1740	Other Deferred Charges			
1750	Material and Supplies			
1760	Cash Working Capital	N/A	N/A	N/A
1770	FCC Investment Adjustment	N/A	N/A	N/A
1790	Total Other Investments			
	Reserves			
1810	Accumulated Depreciation			
1820	Accumulated Amortization			
1830	Deferred FIT			
1840	Customer Deposits			
1850	Other Accrued Liabilities			
1860	Other Deferred Credits			
1870	All Other Reserve Items			
1880	FCC Reserve Adjustment	N/A	N/A	N/A
1890	Total Reserves			
	Return Data			
1910	Average Net Investment			N/A
1915	Net Return	N/A	N/A	N/A
1920	Rate of Return	N/A	N/A	N/A
1925	FCC Ordered Refund	N/A	N/A	N/A
1930	Net Return Including FCC Refund	N/A	N/A	N/A
1935	Rate of Return (including refund)	N/A	N/A	N/A
	Miscellaneous			
1950	Common Line Support-Long Term	N/A	N/A	N/A
1960	Common Line Support-Transitional	N/A	N/A	N/A
1970	Lifeline Adjustment	N/A	N/A	N/A
1980	Universal Service Fund	N/A	N/A	N/A

If applicable:
THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE.
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FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 2.2 OF 2.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	All Other Adjustments	Subject to Separations	State
	(a)	(e)	(f)	(g)
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789
	Plant-in-Service			
1610	Support Plant			
1620	COE-Switching			
1630	COE-Transmission			
1640	Cable and Wire Facilities			
1650	Information Orig./Term. Equipment			
1660	Amortizable Assets			
1690	Total Plant			
	Other Investments			
1710	Property Held for Future Use			
1720	Plant Under Construction			
1730	Plant Acquisition Adjustment	N/A		
1740	Other Deferred Charges			
1750	Material and Supplies			
1760	Cash Working Capital			
1770	FCC Investment Adjustment	N/A	N/A	N/A
1790	Total Other Investments			
	Reserves			
1810	Accumulated Depreciation			
1820	Accumulated Amortization			
1830	Deferred FIT			
1840	Customer Deposits		N/A	
1850	Other Accrued Liabilities			
1860	Other Deferred Credits			
1870	All Other Reserve Items			
1880	FCC Reserve Adjustment	N/A	N/A	N/A
1890	Total Reserves			
	Return Data			
1910	Average Net Investment			
1915	Net Return	N/A	N/A	N/A
1920	Rate of Return	N/A	N/A	N/A
1925	FCC Ordered Refund	N/A	N/A	N/A
1930	Net Return Including FCC Refund	N/A	N/A	N/A
1935	Rate of Return (including refund)	N/A	N/A	N/A
	Miscellaneous			
1950	Common Line Support-Long Term	N/A	N/A	N/A
1960	Common Line Support-Transitional	N/A	N/A	N/A
1970	Lifeline Adjustment	N/A	N/A	
1980	Universal Service Fund	N/A	N/A	

If applicable:
THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE.
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FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I
PAGE 2.3 OF 2.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	Interstate	Common Line	
			Pay	Inside Wire
	(a)	(h)	(i)	(j)
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789
	Plant-in-Service			
1610	Support Plant			
1620	COE-Switching			
1630	COE-Transmission			
1640	Cable and Wire Facilities			
1650	Information Orig./Term. Equipment			
1660	Amortizable Assets			
1690	Total Plant			
	Other Investments			
1710	Property Held for Future Use			
1720	Plant Under Construction			
1730	Plant Acquisition Adjustment			
1740	Other Deferred Charges			
1750	Material and Supplies			
1760	Cash Working Capital			
1770	FCC Investment Adjustment			
1790	Total Other Investments			
	Reserves			
1810	Accumulated Depreciation			
1820	Accumulated Amortization			
1830	Deferred FIT			
1840	Customer Deposits			
1850	Other Accrued Liabilities			
1860	Other Deferred Credits			
1870	All Other Reserve Items			
1880	FCC Reserve Adjustment			
1890	Total Reserves			
	Return Data			
1910	Average Net Investment			
1915	Net Return			
1920	Rate of Return			
1925	FCC Ordered Refund			
1930	Net Return Including FCC Refund			
1935	Rate of Return (including refund)			
	Miscellaneous			
1950	Common Line Support-Long Term	N/A		
1960	Common Line Support-Transitional	N/A		
1970	Lifeline Adjustment			
1980	Universal Service Fund			

... Ruler Line

If applicable:
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FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 2.4 OF 2.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

		Common Line		
Row	Classification	BFP	CPE	Total
	(a)	(k)	(l)	(m)
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789
	Plant-in-Service			
1610	Support Plant			
1620	COE-Switching			
1630	COE-Transmission			
1640	Cable and Wire Facilities			
1650	Information Orig./Term. Equipment			
1660	Amortizable Assets			
1690	Total Plant			
	Other Investments			
1710	Property Held for Future Use			
1720	Plant Under Construction			
1730	Plant Acquisition Adjustment			
1740	Other Deferred Charges			
1750	Material and Supplies			
1760	Cash Working Capital			
1770	FCC Investment Adjustment			
1790	Total Other Investments			
	Reserves			
1810	Accumulated Depreciation			
1820	Accumulated Amortization			
1830	Deferred FIT			
1840	Customer Deposits			
1850	Other Accrued Liabilities			
1860	Other Deferred Credits			
1870	All Other Reserve Items			
1880	FCC Reserve Adjustment			
1890	Total Reserves			
	Return Data			
1910	Average Net Investment			
1915	Net Return			
1920	Rate of Return			
1925	FCC Ordered Refund			
1930	Net Return Including FCC Refund			
1935	Rate of Return (including refund)			
	Miscellaneous			
1950	Common Line Support-Long Term			
1960	Common Line Support-Transitional			
1970	Lifeline Adjustment			
1980	Universal Service Fund			

... Ruler Line

If applicable:
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FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 2.5 OF 2.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

		Traffic Sensitive		
Row	Classification	Switching	EqualAccess	Transport
	(a)	(n)	(o)	(p)
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789
	Plant-in-Service			
1610	Support Plant			
1620	COE-Switching			
1630	COE-Transmission			
1640	Cable and Wire Facilities			
1650	Information Orig./Term. Equipment			
1660	Amortizable Assets			
1690	Total Plant			
	Other Investments			
1710	Property Held for Future Use			
1720	Plant Under Construction			
1730	Plant Acquisition Adjustment			
1740	Other Deferred Charges			
1750	Material and Supplies			
1760	Cash Working Capital			
1770	FCC Investment Adjustment			
1790	Total Other Investments			
	Reserves			
1810	Accumulated Depreciation			
1820	Accumulated Amortization			
1830	Deferred FIT			
1840	Customer Deposits			
1850	Other Accrued Liabilities			
1860	Other Deferred Credits			
1870	All Other Reserve Items			
1880	FCC Reserve Adjustment			
1890	Total Reserves			
	Return Data			
1910	Average Net Investment			
1915	Net Return			
1920	Rate of Return			
1925	FCC Ordered Refund			
1930	Net Return Including FCC Refund			
1935	Rate of Return (including refund)			
	Miscellaneous			
1950	Common Line Support-Long Term	N/A	N/A	N/A
1960	Common Line Support-Transitional	N/A	N/A	N/A
1970	Lifeline Adjustment			
1980	Universal Service Fund			

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FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 2.6 OF 2.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	Traffic Sensitive		Special Access	
		Information	Total		
	(a)	(q)	(r)	(s)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Plant-in-Service				
1610	Support Plant				
1620	COE-Switching				
1630	COE-Transmission				
1640	Cable and Wire Facilities				
1650	Information Orig./Term. Equipment				
1660	Amortizable Assets				
1690	Total Plant				
	Other Investments				
1710	Property Held for Future Use				
1720	Plant Under Construction				
1730	Plant Acquisition Adjustment				
1740	Other Deferred Charges				
1750	Material and Supplies				
1760	Cash Working Capital				
1770	FCC Investment Adjustment				
1790	Total Other Investments				
	Reserves				
1810	Accumulated Depreciation				
1820	Accumulated Amortization				
1830	Deferred FIT				
1840	Customer Deposits				
1850	Other Accrued Liabilities				
1860	Other Deferred Credits				
1870	All Other Reserve Items				
1880	FCC Reserve Adjustment				
1890	Total Reserves				
	Return Data				
1910	Average Net Investment				
1915	Net Return				
1920	Rate of Return				
1925	FCC Ordered Refund				
1930	Net Return Including FCC Refund				
1935	Rate of Return (including refund)				
	Miscellaneous				
1950	Common Line Support-Long Term	N/A	N/A	N/A	
1960	Common Line Support-Transitional	N/A	N/A	N/A	
1970	Lifeline Adjustment				
1980	Universal Service Fund				

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FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 2.7 OF 2.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	Total Access	Billing & Collection	IX	
	(a)	(t)	(u)	(v)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Plant-in-Service				
1610	Support Plant				
1620	COE-Switching				
1630	COE-Transmission				
1640	Cable and Wire Facilities				
1650	Information Orig./Term. Equipment				
1660	Amortizable Assets				
1690	Total Plant				
	Other Investments				
1710	Property Held for Future Use				
1720	Plant Under Construction				
1730	Plant Acquisition Adjustment				
1740	Other Deferred Charges				
1750	Material and Supplies				
1760	Cash Working Capital				
1770	FCC Investment Adjustment				
1790	Total Other Investments				
	Reserves				
1810	Accumulated Depreciation				
1820	Accumulated Amortization				
1830	Deferred FIT				
1840	Customer Deposits				
1850	Other Accrued Liabilities				
1860	Other Deferred Credits				
1870	All Other Reserve Items				
1880	FCC Reserve Adjustment				
1890	Total Reserves				
	Return Data				
1910	Average Net Investment				
1915	Net Return		N/A	N/A	
1920	Rate of Return		N/A	N/A	
1925	FCC Ordered Refund		N/A	N/A	
1930	Net Return Including FCC Refund		N/A	N/A	
1935	Rate of Return (including refund)		N/A	N/A	
	Miscellaneous				
1950	Common Line Support-Long Term	N/A	N/A	N/A	
1960	Common Line Support-Transitional	N/A	N/A	N/A	
1970	Lifeline Adjustment				
1980	Universal Service Fund				

If applicable:
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FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy TABLE II
COSA: xxxx PAGE 1 OF 1

TABLE II - DEMAND ANALYSIS TABLE
(Minutes in thousands, Lines in whole numbers)

MONTHLY DATA

Row	Classification	Month 1	Month 2	Month 3	
	(a)	(b)	(c)	(d)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	COMMON LINE DEMAND-MOU				
	Premium:				
2010	Originating				
2020	Terminating				
	Non-Premium:				
2030	Originating				
2040	Terminating				
	SWITCHED TRAFFIC SENS. DEMAND-MOU				
2050	Premium				
2060	Non-Premium				

QUARTERLY DATA

Row	Classification	Quarter x	
	(aa)	(ab)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	. . . . . Ruler Line
	COMMON LINE DEMAND		
	Carrier Common Line:		
2070	Originating		
2080	Terminating		
2090	Single Line Business C. P. T.		
2100	Residence CPT Lifeline		
2110	Residence CPT Non-Lifeline		
2120	Multiline Business		
2130	Centrex Co and CTX Like Lines		
2140	Special Access Lines Subject to Surcharge		
2150	Total Billable Access Lines		

If applicable:
THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE.
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FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy CONF. TREATMENT TABLE
COSA: xxxx PAGE 1 OF x

CONFIDENTIAL TREATMENT TABLE

Table	Row	Column(s)
(a)	(b)	(c)
xxxx	1234	x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x ... Ruler Line

sample entries:

I	1010	C, G
I	1090	C, G
I	ALL	U
II	2010	ALL

THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR THE ABOVE DATA
IN THIS REPORT.

-OR-

THE COMPANY HAS NOT REQUESTED CONFIDENTIAL TREATMENT FOR ANY DATA
IN THIS REPORT.

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy FOOTNOTE TABLE
COSA: xxxx PAGE 1 OF x

FOOTNOTE TABLE

Table	Row	Col	FN#	Footnote
(a)	(b)	(c)	(d)	(e)
xxxx	1234	xxx	12	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx ... Ruler Line

sample entries:

I	1010	C	1	Footnote text for footnote 1 continuation text for footnote 1 last line of footnote 1
I	1410	ALL	2	Footnote 2 pertains to all columns of Table I row 1410
I	ALL	G	3	Footnote 3 pertains to all rows of Table I column G
II	2010	B	4	Footnote 4 pertains to Table II row 2010 column B

-OR-

THERE ARE NO FOOTNOTES FOR THIS SUBMISSION.

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
ERRATUM TABLE
PAGE 1 OF x

ERRATUM TABLE

Table (a)	Row (b)	Column(s) (c)	Footnote (d)
xxxx	1234	x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x	12 ... Ruler Lin
sample entries:			
I	1010	C, G	1
I	1090	C, G	
I	1410	ALL	2
I	ALL	G	3
II	2010	B	4

THE ABOVE DATA HAS BEEN CORRECTED IN THIS SUBMISSION.
SEE THE FOOTNOTE TABLE FOR FOOTNOTES WHERE APPLICABLE.

CERTIFICATION

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

DIVESTED BOC INDEX

Holding Company	Operating Company	Study Area	Study Area Code
Ameritech			AMTR
	1. Illinois Bell	- Illinois	LBIL
	2. Indiana Bell	- Indiana	NBIN
	3. Michigan Bell	- Michigan	MBMI
	4. Ohio Bell	- Ohio	OBOH
	5. Wisconsin Bell	- Wisconsin	WTWI
Bell Atlantic			BATR
	1. Chesapeake and Potomac		CPTC
		- Dist. of Columbia	CDDC
		- Maryland	CMMD
		- Virginia	CVVA
		- West Virginia	CWWV
	2. Diamond State Telephone	- Delaware	DSDE
	3. Bell of Pennsylvania	- Pennsylvania	PAPA
	4. New Jersey Bell	- New Jersey	NJNJ
Bell South			BSTR
	1. Southern Bell		SBTC
		- Florida	SBFL
		- Georgia	SBGA
		- North Carolina	SBNC
		- South Carolina	SBSC
	2. South Central Bell		SCTC
		- Alabama	SCAL
		- Kentucky	SCKY
		- Louisiana	SCLA
		- Mississippi	SCMS
		- Tennessee	SCTN
NYNEX			NXTR
	1. New England Telephone		NETC
		- Maine	NEME
		- Massachusetts	NEMA
		- New Hampshire	NENH
		- Rhode Island	NERI
		- Vermont	NEVT
	2. New York Telephone	- New York	NYNY
Pacific Telesis			PTTR
	1. Pacific Bell	- California	PTCA
	2. Nevada Bell	- Nevada	PTNV
Southwestern Bell Telephone Company			SWTR
		- Arkansas	SWAR
		- Kansas	SWKS
		- Missouri	SWMO
		- Oklahoma	SWOK
		- Texas	SWTX

Holding Company	Operating Company	Study Area	Study Area Code
U.S. West			USTR
	1. Mountain Bell		MSTC
		- Arizona	MSAZ
		- Colorado	MSCO
		- Idaho	MSID
		- Montana	MSMT
		- New Mexico	MSNM
		- Utah	MSUT
		- Wyoming	MSWY
	2. Northwestern Bell		NWTC
		- Iowa	NWIA
		- Minnesota	NWMN
		- Nebraska	NWNE
		- North Dakota	NWND
		- South Dakota	NWSD
	3. Pacific Northwest Bell		PNTC
		- Idaho	PNID
		- Oregon	PNOR
		- Washington	PNWA
Total Divested Bell Operating Companies			TBOC

INDEPENDENT COMPANY INDEX

Holding Company	Operating Company	Study Area	Study Area Code
Alascom, Inc.		- Alaska	AKAK
Central Telephone Company			CETC
	1. of Florida	- Florida	CEFL
	2. of Illinois	- Illinois	CEIL
	3. of Nevada	- Nevada	CENV
	4. of Virginia	- Virginia	CEVA
Cincinnati Bell Telephone	- Ohio & Kentucky		CBTC
Continental Telephone Company			COTC
	1. Contel of California	- California	COCA
	2. Contel of Illinois	- Illinois	COIL
	3. Contel of Missouri	- Missouri	COMO
	4. Contel of New York	- New York	CONY
	5. Contel of Texas	- Texas	COTX
	6. Contel of Virginia	- Virginia	COVA
GTE Telephone Operating Companies			GTTC
1. General Telephone Company of California		- California	GTCA
2. General Telephone Company of Florida		- Florida	GTFL
3. General Telephone Company of the Northwest, Inc.			GTNW
		- Idaho & Montana	GTNA
		- Idaho	GTID
		- Montana	GTMT
		- OR, WA & Wstn CA	GTNB
		- Oregon	GTOR
		- Washington	GTWA
		- CA - West Coast	GNCA
4. General Telephone Company of the South			GTSO
		- Alabama	GTAL
		- Georgia	GTGA
		- Kentucky	GTKY
		- North Carolina	GTNC
		- South Carolina	GTSC
		- Tennessee	GTTN
		- Virginia	GTVA
		- West Virginia	GTWV

Holding Company	Operating Company	Study Area	Study Area Code
	5. General Telephone Company of the Southwest		GTSW
		- Arkansas	GTAR
		- New Mexico	GTNM
		- Oklahoma	GTOK
		- Texas	GTTX
	6. GTE of the North, Inc.		GTMW
		- Illinois	GTIL
		- Indiana	GTIN
		- Iowa	GTIA
		- Michigan	GTMI
		- Minnesota	GTMN
		- Missouri	GTMO
		- Nebraska (also serving Kansas)	GTNE
		- Ohio	GTOH
		- Pennsylvania	GTPA
		- Wisconsin	GTWI
	7. Hawaiian Telephone Company	- Hawaii	GTHI
Lincoln Telephone Company		- Nebraska	LTNE
Puerto Rico Telephone Company		- Puerto Rico	PRPR
Rochester Telephone Corporation		- New York	RTNY
Southern New England Telephone		- Connecticut	SNCT
United Telephone System.			UTTC
	1. United Tel. Co. of Florida	- Florida	UTFL
	2. United Tel. Co. of Indiana	- Indiana	UTIN
	3. United Tel. Co. of Missouri	- Missouri	UTMO
	4. Carolina Tel. and Tel. Co.	- North Carolina	UTNC
	5. United Tel. Co. of Ohio	- Ohio	UTOH
	6. United Tel. Co. of Penn.	- Pennsylvania	UTPA
	7. United Inter-Mountain Tel. Co.		UTIM
		- Tennessee	UTTN
		- Virginia	UTVA
Total Independent Companies			TICO
Total Industry			TOTL

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-182

In the Matter of

Automated Reporting Requirements
for Certain Class A and Tier 1
Telephone Companies (Parts 31,
43, 67, and 69 of the FCC's Rules)

ORDER

Adopted: January 5, 1989; Released: January 6, 1989

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In an Order, released on September 17, 1987,[1] in the above captioned docket, the Commission established an automated system of reports for collecting financial and operating data from certain local exchange carriers (LECs). One is the Joint Cost Report (*ARMIS Order*, Appendix C) which shows the allocations of costs between regulated and nonregulated activities pursuant to Part 64 of the Commission's Rules.

2. On October 14, 1988, the Commission released the *ARMIS Reconsideration Order* which resolved the major substantive and procedural issues raised in petitions for reconsideration and delegated to the Chief, Common Carrier Bureau, the authority to make such further revisions of a minor, technical nature as may be necessary. In this *Order*, we are revising the Joint Cost Report to incorporate the changes required by the *ARMIS Reconsideration Order* and we are making certain other technical changes. The revised Joint Cost Report is shown in the Appendix. The Appendix is available for inspection and copying during normal business hours in the Accounting and Audits Branch, Room 812, 2000 L Street NW., Washington, DC. Copies may also be purchased from the Commission's copy contractors, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC. 20037, (202) 857-3800.

II. ISSUES AND DISCUSSION

3. In the *ARMIS Reconsideration Order*, the Commission discussed the petitions for reconsideration and agreed generally that the existing reporting requirements required some revision. The Commission ordered the Common Carrier Bureau to make these revisions. Our revisions to the Joint Cost Report fall into three general categories: (1) revisions specifically required by the *ARMIS Reconsideration Order*; (2) revisions required as a result of the *Quarterly Report Order* ;[2] and (3) minor, technical revisions required for consistency with Parts 32, 36 and 69 of the Commission's Rules. In addition, we are denying two minor, technical requests that were raised in the petitions for reconsideration.

4. The Commission's action in the *ARMIS Reconsideration Order* requires the following revisions: (1) elimination of Rate of Return data and (2) revision of the column headings for reporting regulated and nonregulated allocations to be consistent with the Commission's decisions in CC Docket 86-111[3] as follows:

Directly Assigned - Regulated

Directly Assigned - Nonregulated

Attributed - Regulated

Attributed - Nonregulated

Generally Allocated - Regulated

Generally Allocated - Nonregulated.

5. Consistency with the *Quarterly Report Order* requires the following revisions: (1) relabeling the Adjustments column to read, "SNFA and Intracompany Adjustments" and addition of a column for "Other Adjustments"; (2) clarification that all data must be reported as booked with the exception of the data in the two adjustment columns and the "Subject to Separations" column which will be reported as adjusted; and (3) inclusion of Account 7991, "Other Nonregulated Revenues" because it is included in the reporting requirements.[4]

6. Consistency with Part 32, 36 and 69 requires the following revisions: (1) addition of Class B accounts to be consistent with the aggregations necessary for the separations process; and (2) miscellaneous other technical changes such as the reclassification of several accounts and designation of inapplicable data fields.

7. In its petition for reconsideration of the *ARMIS Order*,[5] GTE notes that there is an inconsistency between the Tariff Review Plan (TRP)[6] and Appendix C. GTE states that although the Joint Cost Report provides for the assignment of detariffed customer premises equipment (CPE) pursuant to Part 36, Section 142(b), the TRP removes these costs before such assignment is possible. GTE requests revision of the TRP. We deny GTE's request that we revise the TRP treatment of detariffed CPE to make it consistent with the Joint Cost Report because it is not within the purview of the *ARMIS Order*, or the *ARMIS Reconsideration Order*. If, after reviewing the attached report and the 1989 TRP, GTE still seeks redress, it may file comments in the 1989 TRP proceeding.

8. We also deny Pacific Bell's request that central office equipment be reported in accordance with an allocation based on forecasted investment usage. The Forecast of Investment Usage Report (FCC Form 495A) already collects central office equipment data allocated based on forecasted investment usage. We clarify that the amounts to be reported in the Joint Cost Report are to be actual amounts.

III. PAPERWORK REDUCTION ACT

9. The proposal contained herein is in compliance with the Paperwork Reduction Act of 1980 and imposes no substantive or material modification to the approved information collection requirement on the public. Imple-

mentation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed in the Act.

IV. ORDERING CLAUSE

10. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 201- 205, 215, 219, and 220 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j) 201-205, 215, 219, and 220, that the form attached hereto IS ADOPTED, and that the modifications herein ARE ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67 and 69 of the FCC's Rules), 2 FCC Rcd 6283 (1987) (*ARMIS Order), modified on recon.*, FCC 88-331 (released October 14, 1988) (*ARMIS Reconsideration Order).*

[2] *See* Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules, CC Docket 86-182, DA 88-2067 (released January 6, 1989). (*Quarterly Report Order).* The *Quarterly Report Order* made changes to another ARMIS report, and for consistency these changes must also be reflected in the Joint Cost Report.

[3] *See* Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, *Report and Order*, CC Docket 86-111, 2 FCC Rcd 1298 (1987) (*Joint Cost Order), recon.*, 2 FCC Rcd 6283 (1987) *(Reconsideration Order), further recon.*, 3 FCC Rcd 6701 (1988) *(Further Reconsideration Order), petitions for review pending,* Southwestern Bell Corp. v. FCC, No. 87-1764 (D.C. Cir. December 15, 1987); National Tel. Cooperative Ass'n v. FCC, D.C. Circuit No. 87-1771 (filed Dec. 15, 1987).

[4] Account 7991 will be replaced by Account 5280 effective May 22, 1989. *See Further Reconsideration Order*, 3 FCC Rcd at 6702.

[5] GTE Petition at page 9.

[6] Under Part 69 of the Commission's Rules, 47 C.F.R. Part 69, local exchange carriers (LECs) are required to file annual access tariffs and cost support therefor. The LEC's cost support must demonstrate that the LECs will recover no more than their allowed rate of return, based on reasonable projections of cost and demand. The Commission has established certain requirements for the carriers' cost support material which constitute so-called Tariff Review Plans. *See* Commission Requirements for Cost Support Material To Be Filed with 1989 Annual Access Tariffs (DA 88-1554), released October 3, 1988.

APPENDIX

This document provides the instructions for FCC Report 43-03, the ARMIS Joint Cost Report, which was adopted by the Commission in CC Docket No. 86-182. The instructions consist of the following five sections, which are attached:

1. Reporting Procedures - details on the specific procedures to be followed when submitting this report to the Commission.

2. Report Definition - an illustration of the rows and columns to be reported and their definitions.

3. Automated Report Specifications - the detailed automated data processing (ADP) specifications for the automated report to be filed.

4. Paper Report Specifications - the page layout and detailed specifications for the paper report to be filed.

5. COSA Code Table - the list of four letter COSA codes (CO = Company, SA = Study Area).

A. Introduction

This document contains details on the specific procedures to be followed when submitting FCC Report 43-03, the ARMIS Joint Cost Report, to the Commission.

B. General Information

1. FCC Report 43-03 was adopted by the Commission in the ARMIS Order, Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), CC Docket No. 86-182, 2 FCC Rcd 5770 (1987). The report is prescribed for every local exchange carrier with operating revenues in excess of $100 million.

2. Affected carriers carrier shall file by April 1 of each year the report for the previous calendar year. The inital report will be filed by April 1, 1989 and will contain data for the calendar year 1988.

3. The report shall be filed on a study area (jurisdiction) basis.

4. Carriers seeking proprietary treatment for some data must provide two versions of each paper and automated report. The Confidential Version must contain all the required information (Confidential Treatment Tables/Data Records are provided to identify confidential data). The Public Version should not include data for which the carrier is seeking proprietary treatment. The carrier should **prominently** label the paper report and the diskette containing information subject to a claim of confidentiality to prevent inadvertent disclosure.

5. Carriers not seeking proprietary treatment for any data should provide only one version of each paper report and diskette, and the paper report and the diskette should be labeled the Unrestricted Version.

6. The Confidential Treatment Tables/Data Records are to be included in all reports but are not a substitute for applying for confidential treatment with this Commission following established Commission procedures.

7. Each report and diskette must be clearly labeled to include the report number, company, study area, period, COSA code, version and submission number. The report number is 43-03, which identifies the filing as the ARMIS Joint Cost Report. The period identifies the year covered by the report. See the attached COSA Code Table (CO = Company, SA = Study Area) for a list of companies and their respective COSAs. The version refers to whether the filing is the Confidential, Public or Unrestricted Version. The submission number is defined as follows: Submission 0 is for test data purposes only. Submission 1 is the first submission of a year's

data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission.

8. All correspondence and pleadings shall identify the proceeding as CC Docket 86-182.

C. **Data Items That Are "Not Available" or Are "Withheld"**

1. The term "Not Available" is used below to refer only to those items which the Commission has ruled are not applicable to a particular row/column or are not required for a particular filing entity. The Confidential Version must contain values for all of the data items except those items which are "Not Available." If, in addition to the required study area reports, a carrier submits a report which combines data for more than one study area, and this report includes a field such as a sum, a ratio, or a percentage that cannot be computed completely and accurately because it relies on another item which the Commission has ruled is a "Not Available" item, then that field is also considered to be "Not Available."

2. The term "Withheld" is used below to refer only to those items for which the carrier has applied for confidential treatment with the Commission and is only applicable to the Public Version. If a field such as a sum, a ratio or a percentage relies on an item or items which have been withheld and that field is not also withheld, then it must include the withheld amount. For example, a carrier could withhold the individual values for two of three numbers which are totaled. If the carrier does not also apply for confidential treatment for the total, then that total must be the sum of all three numbers, not just the one which was not withheld. The Public Version must contain values for all of the data items except those items which are "Not Available" or those items which have been "Withheld."

3. See paragraph C.5 in the attached Automated Report Specifications and paragraph C.2 in the attached Paper Report Specifications for data entry conventions for these items.

D. **Where to File**

1. Carriers submitting FCC Report 43-03 should consult the schedule below which details the number of copies required and the location to which those copies should be delivered.

2. Carriers are reminded that they must serve a copy of either the Unrestricted Version or the Public Version of both the paper report and the automated report (diskette) on the FCC's contractor for public records duplication, International Transcription Services, Inc., (ITS). These copies should be mailed to the attention of Wilbur Thomas of ITS at Suite 140, 2100 M Street, N.W., Washington, D.C. 20037 or delivered to ITS in Room 246 at FCC Headquarters, 1919 M Street, N.W., Washington, D.C. 20036.

NUMBER OF COPIES

FOR CARRIERS SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Confidential Paper Report	Confidential Automated Report (diskette)	Public Paper Report	Public Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-	-	-
FCC Common Carrier Bureau Accounting & Audits Division 2000 L Street, N.W. Washington, D.C. 20554	1	1	1	1	1
ITS - Room 246 ATTN: Wilbur Thomas 1919 M Street, N.W. Washington, D.C. 20036	1	-	-	1	1

FOR CARRIERS NOT SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Unrestricted Paper Report	Unrestricted Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-
FCC Common Carrier Bureau Accounting & Audits Division 2000 L Street, N.W. Washington, D.C. 20554	1	1	1
ITS - Room 246 ATTN: Wilbur Thomas 1919 M Street, N.W. Washington, D.C. 20036	1	1	1

E. **Footnotes**

1. If any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances not explained in a previous report, then include footnote text to explain the occasioning facts.

2. This footnote text must be included in the Footnote Text Records and the Footnote Table as specified in the attached Automated Report Specifications and the attached Paper Report Specifications.

F. **Errata**

1. Carriers are under a legal obligation to correct any erroneous data discovered in FCC Report 43-03. Submissions containing corrected data must include references to indicate which data items were corrected since the previous submission.

2. These references must be included in the Erratum Records and the Erratum Table as specified in the attached Automated Report Specifications and the attached Paper Report Specifications.

G. **Certification**

1. Carriers must certify the accuracy of the data submitted in FCC Report 43-03 by including a signed certification statement as the last page of the paper report.

2. The text of the certification statement is included on page 46 of the attached Paper Report Specifications.

H. **Waivers**

1. If a carrier determines that it will be unable to provide data required by FCC Report 43-03, it must file an application for waiver with the Commission following established Commission procedures. All such requests from a carrier should be included in a single application. The application must demonstrate good cause for reporting a different or lower level of detail and indicate how these deficiencies will be corrected.

2. Carriers are strongly encouraged to comply with the requirements. Omission of individual data items or entries, without request for waiver, is unacceptable. One reason that compliance with the full requirements is so important is that omission of any single data entry by any carrier will jeopardize the accuracy of aggregate industry information.

I. Public Information

1. The Public or Unrestricted Versions of the paper reports filed as Report 43-03 may be examined by the public from 9:00 to 11:00 a.m. and from 2:00 to 4:00 p.m., Monday through Friday, in Room 812, 2000 L Street, N.W., Washington, D.C.

2. Copies of the Public or Unrestricted Versions of the paper or automated reports filed as FCC Report 43-03 may be obtained from the FCC's contractor for public records duplication, ITS. Parties should contact Wilbur Thomas of ITS at (202) 857-3800.

For further information regarding these procedures, contact:

Adrianne Brent
FCC Common Carrier Bureau
Accounting & Audits Division
(202) 634-1861

Approved by OMB
3060-0395
Expires 10/31/90
Estimated Average Burden Hours Per Response: 115 hours

SUMMARY

This document provides the Report Definition for FCC Report 43-03, the ARMIS Joint Cost Report, and lists the annual revenue requirement and joint cost data which must be provided annually for each study area. It contains the following:

	Pages
Row and Column Descriptions	2 - 5
Table I - Regulated/Nonregulated Data	6 - 15
Certification	16

All amounts must be rounded to the nearest thousand dollars.

Items which need not be reported because they do not apply are designated by N/A. All other fields must be populated. If there are no data applicable to a given field, enter zero.

Do not include explanatory notes in the transmittal letter; such notes must be included in the Footnotes section of the filing.

NOTICE: The ARMIS Joint Cost Report collects the study area level data for regulated and nonregulated operations for those accounts which are related to a carrier's revenue requirement. The ARMIS Joint Cost Report specifies information requirements in a consistent format and is essential to the FCC to monitor revenue requirements, joint cost allocations, jurisdictional separations and access charges. Your response is mandatory.

Public reporting burden for this collection of information is estimated to average 115 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Federal Communications Commission, Office of Managing Director, Washington DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington DC 20503.

ROW INSTRUCTIONS

Every row item is not described below. Those rows omitted from the following instructions are Part 32 accounts and the amounts entered for these accounts should be reported pursuant to our Part 32 Rules. The following descriptions apply to those rows that are summarizations of immediately preceeding accounts. Four digit row numbers indicate that there is a Part 32 account bearing the same number and title. Three digit row numbers indicate that there is no comparable Part 32 account.

Row	Description
5000.	Basic Local Service Revenue (Class B) - This amount is the total of rows 5001 through 5069.
5080.	Network Access Revenue - This amount is the total of rows 5081 through 5084.
5110.	Unidirectional Long Distance Revenue - This amount is the total of rows 5111 and 5112.
5120.	Long Distance Private Network Revenue - This amount is the total of rows 5121 through 5129.
5100.	Long Distance Message Revenue - This amount is the total of rows 5110, 5120, 5160 and 5169.
5260.	Miscellaneous Revenue (Class A) - This amount is the total of rows 5230 through 5269.
5200.	Miscellaneous Revenue - This amount is the total of rows 5260, 5270 and 5280.
5300.	Uncollectible Revenue - This amount is the total of rows 5301 and 5302.
530.	Net Revenues - This amount is the total of rows 5000, 5080, 5100, and 5200 less row 5300.
6110.	Network Support Expense - This amount is the total of rows 6112 through 6116.
6120.	General Support Expenses - This amount is the total of rows 6121 through 6124.
6210.	Central Office Switching Expense - This amount is the total of rows 6211 through 6215.
6230.	Central Office Transmission Expense - This amount is the total of rows 6231 and 6232.
6410.	Cable and Wire Facilities Expense - This amount is the total of rows 6411 through 6441.
6510.	Other Property Plant and Equipment Expenses - This amount is the total of rows 6511 and 6512.
6530.	Network Operations Expenses - This amount is the total of rows 6531 through 6535.
6560.	Depreciation and Amortization Expenses - This amount is the total of rows 6561 through 6565.
6610.	Marketing - This amount is the total of rows 6611 through 6613.

6620. Services - This amount is the total of rows 6621 through 6623.

6710. Executive and Planning - This amount is the total of rows 6711 and 6712.

6720. General and Administrative - This amount is the total of rows 6721 through 6728.

7100. Other Operating Income and Expense - This amount is the total of rows 7110 through 7160.

7200. Operating Taxes - This amount is the total of rows 7210 through 7250.

7300. Nonoperating Income and Expense - This amount is the total of rows 7310 through 7370.

7400. Nonoperating Taxes - This amount is the total of rows 7410 through 7450.

7500. Interest and Related Items - This amount is the total of rows 7510 through 7540.

7600. Extraordinary Items - This amount is the total of rows 7610 through 7640.

740. IRS Income Adjustment - This amount is the difference between taxable income reported for IRS purposes and the taxable income shown in accordance with the USOA.

750. Total Expenses - This amount is the total of rows 6110, 6120, 6210, 6220, 6230, 6310, 6410, 6510, 6530, 6540, 6560, 6610, 6620, 6710, 6720, and 6790, plus or minus 7100, plus 7200, plus or minus 7300, plus 7400 and 7500, plus or minus 7600, 7910, 7990 and 740.

2110. Land and Support Assets - This amount equals the total of rows 2111 through 2124.

2210. Central Office - Switching - This amount equals the total of rows 2211 through 2215.

2230. Central Office - Transmission - This amount equals the total of rows 2231 and 2232.

2310. Information Origination/Termination - This amount equals the total of rows 2311 through 2362.

2410. Cable and Wire Facilities - This amount equals the total of rows 2411 through 2441.

2680. Amortizable Tangible Assets - This amount equals the total of rows 2681 and 2682.

2001. Telecommunications Plant In Service - This amount equals the total of rows 2110, 2210, 2220, 2230, 2310, 2410, 2680 and 2690.

230. Cash Working Capital - This amount equals that portion of investment required to meet current expenses. This amount shall be calculated in accordance with Part 65 of the Commission's Rules.

370. Total Investment - This amount equals the total of rows 2001, 2002, 2003, 2004, 2005, 1220, 1438, 1439, 1500 and 230.

3400. Accumulated Amortization - Tangible - This amount equals the total of rows 3410 and 3420.

495. Total Reserve - This amount equals the total of rows 3100, 3200, 3400, 3500, 3600, 4100, 4340, 4030, 4040, 4120, 4360 and 4370.

NOTE 1: Class B companies should enter Class B Account balances in the appropriate rows and "N/A" in all columns of the Class A level rows. Unless otherwise indicated, Class A companies must enter data in every row, including the Class B level accounts, to be consistent with the requirements of Part 36.

NOTE 2: The balance of account 7991 must be entered in row 5280.

COLUMN INSTRUCTIONS

Column	Description
(b)	Total - This amount reflects the operating result for each of the accounts itemized in this report, and includes all regulated and nonregulated company operations for each row. These amounts are represented prior to separation between state and interstate jurisdictions.
(c)	Directly Assigned-Regulated - This amount reflects that portion of each itemized account that is dedicated solely to regulated operations.
(d)	Directly Assigned-Nonregulated - This amount reflects that portion of each itemized account that is dedicated solely to nonregulated operations.
(e)	Attributed-Regulated - This amount reflects that portion of each itemized account that is allocated to regulated activities based on a direct measure of cost causation.
(f)	Attributed-Nonregulated - This amount reflects that portion of each itemized account that is allocated to nonregulated activities based on a direct measure of cost causation.
(g)	Generally Allocated-Regulated - This amount reflects that portion of each itemized account that is allocated to regulated activities based on the general allocator as described in Part 64.
(h)	Generally Allocated-Nonregulated - This amount reflects that portion of each itemized account that is allocated to nonregulated activities based on the general allocator as described in Part 64.
(i)	Total Regulated - This amount equals the total of columns (c), (e) and (g).
(j)	Total Nonregulated - This amount equals the total of columns (d), (f) and (h).
(k)	SNFA and Intra-company Adjustments - This amount reflects adjustments made to each account for costs related to shared network facility arrangements and intra-company subsidiary contracts.
(l)	Other Adjustments - This amount reflects all remaining adjustments, such as prior period adjustments, necessary to arrive at the amount subject to separations.
(m)	Subject to Separations - This amount reflects that portion of each account which must be allocated between state and interstate jurisdictions (column (i) less columns (k) and (l)).

NOTE: All data must be reported as booked with the exception of the data in columns (k), (l), and (m) which will be reported as adjusted.

FCC REPORT 43-03
ARMIS JOINT COST REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total (b)	Directly Assigned		Attributed		Generally Allocated	
			Regulated (c)	Nonreg. (d)	Regulated (e)	Nonreg. (f)	Regulated (g)	Nonreg. (h)
	REVENUES							
	Local Network Svcs							
5001	Basic area revenue							
5002	Optional ext area							
5003	Cellular mobile							
5004	Other mobile servic							
5010	Public telephone							
5040	Local private line							
5050	Customer premises							
5060	Other local exchang							
5069	Other local settles							
5000	Ba loc svc(Class B)							
	Network Access Svcs							
5081	End user			N/A		N/A		N/A
5082	Switched access			N/A		N/A		N/A
5083	Special access			N/A		N/A		N/A
5084	State access			N/A		N/A		N/A
5080	Network access			N/A		N/A		N/A
	Toll Network Svcs							
5111	LD Inward-only							
5112	LD Outward-only							
5110	Unidirectional LD							
5121	Subvce LD pvt ntwk							
5122	Vce LD pvt network							
5123	Audio LD pvt ntwk							
5124	Vidio LD pvt ntwk							
5125	Digital LD pvt ntwk							
5126	LD pvt ntwk switch							
5128	Other LD pvt ntwk							
5129	Other LD pvt settle							
5120	LD private network							
5160	Other LD							
5169	Other LD settlement							
5100	LD message revenue							
	Miscellaneous							
5230	Directory							
5240	Rent							
5250	Corporate operation							
5261	Special billing arr							
5262	Customer operations							
5263	Plant operations							
5264	Other incident reg							
5269	Other settlements							
5260	Misc. (Class A)							
5270	Carrier bill & coll							
5280	Other nonregulated							
5200	Miscellanous							
	Uncollectible revs							
5301	Uncollect-telecomm							
5302	Uncollect-other							
5300	Uncollectible rev							
550	Net Revenues							

FCC REPORT 43-03
ARMIS JOINT COST REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total Regulated (j)	Total Nonreg. (j)	SNFA and Intra-co. Adjustments (k)	Other Adjustments (l)	Subject to Separations (m)
	REVENUES					
	Local Network Svcs					
5001	Basic area revenue					N/A
5002	Optional ext area					N/A
5003	Cellular mobile					N/A
5004	Other mobile servic					N/A
5010	Public telephone					N/A
5040	Local private line					N/A
5050	Customer premises					N/A
5060	Other local exchang					N/A
5069	Other local settles					N/A
5000	Ba loc svc(Class B)					
	Network Access Svcs					
5081	End user		N/A			
5082	Switched access		N/A			
5083	Special access		N/A			
5084	State access		N/A			
5080	Network access		N/A			
	Toll Network Svcs					
5111	LD Inward-only					N/A
5112	LD Outward-only					N/A
5110	Unidirectional LD					N/A
5121	Subvce LD pvt ntwk					N/A
5122	Vce LD pvt network					N/A
5123	Audio LD pvt ntwk					N/A
5124	Vidio LD pvt ntwk					N/A
5125	Digital LD pvt ntwk					N/A
5126	LD pvt ntwk switch					N/A
5128	Other LD pvt ntwk					N/A
5129	Other LD pvt settle					N/A
5120	LD private network					N/A
5160	Other LD					N/A
5169	Other LD settlement					N/A
5100	LD message revenue					
	Miscellaneous					
5230	Directory					N/A
5240	Rent					N/A
5250	Corporate operation					N/A
5261	Special billing arr					N/A
5262	Customer operations					N/A
5263	Plant operations					N/A
5264	Other incident req					N/A
5269	Other settlements					N/A
5260	Misc. (Class A)					N/A
5270	Carrier bill & coll					N/A
5280	Other nonregulated					N/A
5200	Miscellaneous					
	Uncollectible revs					
5301	Uncollect-telecomm					N/A
5302	Uncollect-other					N/A
5300	Uncollectible rev					
530	Net Revenues					

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ARMIS JOINT COST REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row Acct. Number	Account Title (a)	Total (b)	Directly Assigned		Attributed		Generally Allocated	
			Regulated (c)	Nonreg. (d)	Regulated (e)	Nonreg. (f)	Regulated (g)	Nonreg. (h)
	EXPENSES							
	Plant Specific							
6112	Motor vehicle							
6113	Aircraft							
6114	Special purpose veh							
6115	Garage work equip							
6116	Other work equip							
6110	Network support							
6121	Land & building							
6122	Furniture & artwork							
6123	Office equipment							
6124	Gen purpose comput							
6120	General support							
6211	Analog electronic							
6212	Digital electronic							
6215	Electro-mechanical							
6210	Central office-swit							
6220	Operator systems							
	Central office tran							
6231	Radio systems							
6232	Circuit equipment							
6230	Central office tran							
6341	Station apparatus							
6341	Large PBX							
6351	Public tel tmnl equ							
6362	Other terminal equi							
6310	Information O/T							
6411	Poles							
6421	Aerial cable							
6422	Undgerground cable							
6423	Buried cable							
6424	Submarine cable							
6425	Deep sea cable							
6426	Intrabldg ntwk cabl							
6431	Aerial wire							
6441	Conduit systems							
6410	Cable & wire							
	Plant Non-Specific							
6511	PHFTU			N/A		N/A		N/A
6512	Provisioning							
6510	Other PP&E expense							
6531	Power							
6532	Network administrat							
6533	Testing							
6534	Plant ops administr							
6535	Engineering							
6530	Network operations							
6540	Access							
	Depreciate/Amortize							
6561	Depreciation-TPIS							
6562	Depreciation-PHFTU							
6563	Amortization-tangib							
6564	Amortization-intang							
6565	Amortization-other							
6560	Depreciate/Amortize							

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xxxxxxxxxxxx VERSION
SUBMISSION x
TABLE I

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total Regulated (i)	Total Nonreg. (j)	SNFA and Intra-co. Adjustments (k)	Other Adjustments (l)	Subject to Separations (m)
	EXPENSES					
	Plant Specific					
6112	Motor vehicle					N/A
6113	Aircraft					N/A
6114	Special purpose veh					N/A
6115	Garage work equip					N/A
6116	Other work equip					N/A
6110	Network support					
6121	Land & building					N/A
6122	Furniture & artwork					N/A
6123	Office equipment					N/A
6124	Gen purpose comput					N/A
6120	General support					
6211	Analog electronic					N/A
6212	Digital electronic					N/A
6215	Electro-mechanical					N/A
6210	Central office-swit					
6220	Operator systems					
	Central Office Tran					
6231	Radio systems					N/A
6232	Circuit equipment					N/A
6230	Central office tran					
6311	Station apparatus					N/A
6341	Large PBX					N/A
6351	Public tel tmnl equ					N/A
6362	Other terminal equi					N/A
6310	Information O/T					
6411	Poles					N/A
6421	Aerial cable					N/A
6422	Undgerground cable					N/A
6423	Buried cable					N/A
6424	Submarine cable					N/A
6425	Deep sea cable					N/A
6426	Intrabldg ntwk cabl					N/A
6431	Aerial wire					N/A
6441	Conduit systems					N/A
6410	Cable & wire					
	Plant Non-Specific					
6511	PHFTU		N/A			N/A
6512	Provisioning					N/A
6510	Other PP&E expense					
6531	Power					N/A
6532	Network administrat					N/A
6533	Testing					N/A
6534	Plant ops administr					N/A
6535	Engineering					N/A
6530	Network operations					
6540	Access					
	Depreciate/Amortize					
6561	Depreciation-TPIS					N/A
6562	Depreciation-PHFTU					N/A
6563	Amortization-tangib					N/A
6564	Amortization-intang					N/A
6565	Amortization-other					N/A
6560	Depreciate/Amortize					

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

xxxxxxxxxxxx VERSION
SUBMISSION x
TABLE I

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total (b)	Directly Assigned		Attributed		Generally Allocated	
			Regulated (c)	Nonreg. (d)	Regulated (e)	Nonreg. (f)	Regulated (g)	Nonreg. (h)
	Customer Ops-Mkting							
6611	Product management							
6612	Sales							
6613	Product advertising							
6610	Marketing expense							
	Customer Ops-Servic							
6621	Call completion							
6622	Number services							
6623	Customer services							
6620	Services expense							
	Corporate Operation							
6711	Executive							
6712	Planning							
6710	Executive & plannin							
6721	Accounting & financ							
6722	External relations							
6723	Human resources							
6724	Information Managmt							
6725	Legal							
6726	Procurement							
6727	Research & develop							
6728	Other general & adm							
6720	General & administr							
6790	Prov uncollect note							
	Other Ops Inc/Expen							
7110	Income custom work							
7130	Return nonreg use							
7140	Gain/loss foreign							
7150	Gain/loss land/art							
7160	Other ops gain/loss							
7100	Other ops inc/expen							
	Operating Taxes							
7210	Ops inv tax cr-net							
7220	Ops federal inc tax							
7230	Ops state & local							
7240	Ops other taxes							
7250	Prov defer inc tax							
7200	Operating taxes							
	Nonops income/expen							
7310	Dividend income							
7320	Interest income							
7330	Inc sinking/other							
7340	AFUDC							
7350	Gain/loss property							
7360	Other nonops income							
7370	Special charges							
7300	Nonops income/expen							
7410	Nonops inv tx cr-nt							
7420	Nonops fed inc tax							
7430	Nonops state & locl							
7440	Nonops other taxes							
7450	Prov defer tax-net							
7400	Nonoperating taxes							

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total Regulated (i)	Total Nonreg. (j)	SNFA and Intra-co. Adjustments (k)	Other Adjustments (l)	Subject to Separations (m)
	Customer Ops-Mkting					
6611	Product management					N/A
6612	Sales					N/A
6613	Product advertising					N/A
6610	Marketing expense					
	Customer Ops-Servic					
6621	Call completion					N/A
6622	Number services					N/A
6623	Customer services					N/A
6620	Services expense					
	Corporate Operation					
6711	Executive					N/A
6712	Planning					N/A
6710	Executive & plannin					
6721	Accounting & financ					N/A
6722	External relations					N/A
6723	Human resources					N/A
6724	Information Managmt					N/A
6725	Legal					N/A
6726	Procurement					N/A
6727	Research & develop					N/A
6728	Other general & adm					N/A
6720	General & administr					
6790	Prov uncollect note					
	Other Ops Inc/Expen					
7110	Income custom work					N/A
7130	Return nonreg use					N/A
7140	Gain/loss foreign					N/A
7150	Gain/loss land/art					N/A
7160	Other ops gain/loss					N/A
7100	Other ops inc/expen					
	Operating Taxes					
7210	Ops inv tax cr-net					N/A
7220	Ops federal inc tax					N/A
7230	Ops state & local					N/A
7240	Ops other taxes					N/A
7250	Prov defer inc tax					N/A
7200	Operating taxes					
	Nonops income/expen					
7310	Dividend income					N/A
7320	Interest income					N/A
7330	Inc sinking/other					N/A
7340	AFUDC					N/A
7350	Gain/loss property					N/A
7360	Other nonops income					N/A
7370	Special charges					N/A
7300	Nonops income/expen					
7410	Nonops inv tx cr-nt					N/A
7420	Nonops fed inc tax					N/A
7430	Nonops state & locl					N/A
7440	Nonops other taxes					N/A
7450	Prov defer tax-net					N/A
7400	Nonoperating taxes					

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total (b)	Directly Assigned		Attributed		Generally Allocated	
			Regulated (c)	Nonreg. (d)	Regulated (e)	Nonreg. (f)	Regulated (g)	Nonreg. (h)
	Int & Related Items							
7510	Int on funded debt							
7520	Int exp-cap leases							
7530	Amort debt issuance							
7540	Other interest ded							
7500	Int & related items							
	Extraordinary Items							
7610	Extraord income crs							
7620	Extraord income chg							
7630	Current inc tax eff							
7640	Prov defer tax-net							
7600	Extraordinary items							
7910	Inc effcts diff-net							
7990	Nonreg net income		N/A		N/A		N/A	
	Adjustments							
740	IRS income adjust							
750	Total Expenses							
	PLANT-IN-SERVICE							
	Support Plant							
2111	Land							
2112	Motor vehicles							
2113	Aircraft							
2114	Special purpose veh							
2115	Garage work equip							
2116	Other work equip							
2121	Buildings							
2122	Furniture							
2123	Office equipment							
2124	Gen purpose comput							
2110	Land & support							
	Central Off-Switch							
2211	Analog elect switch							
2212	Digit elect switch							
2215	Electro-mech switch							
2210	Central off switch							
2220	Operator systems							

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total Regulated (i)	Total Nonreg. (j)	SNFA and Intra-co. Adjustments (k)	Other Adjustments (l)	Subject to Separations (m)
	Int & Related Items					
7510	Int on funded debt					N/A
7520	Int exp-cap leases					N/A
7530	Amort debt issuance					N/A
7540	Other interest ded					N/A
7500	Int & related items					
	Extraordinary Items					
7610	Extraord income crs					N/A
7620	Extraord income chg					N/A
7630	Current inc tax eff					N/A
7640	Prov defer tax-net					N/A
7600	Extraordinary items					
7910	Inc effcts diff-net					
7990	Nonreg net income	N/A		N/A	N/A	N/A
	Adjustments					
740	IRS income adjust			N/A	N/A	
750	Total Expenses					
	PLANT-IN-SERVICE					
	Support Plant					
2111	Land					N/A
2112	Motor vehicles					N/A
2113	Aircraft					N/A
2114	Special purpose veh					N/A
2115	Garage work equip					N/A
2116	Other work equip					N/A
2121	Buildings					N/A
2122	Furniture					N/A
2123	Office equipment					N/A
2124	Gen purpose comput					N/A
2110	Land & support					
	Central Off-Switch					
2211	Analog elect switch					N/A
2212	Digit elect switch					N/A
2215	Electro-mech switch					N/A
2210	Central off switch					
2220	Operator systems					

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
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xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total (b)	Directly Assigned		Attributed		Generally Allocated	
			Regulated (c)	Nonreg. (d)	Regulated (e)	Nonreg. (f)	Regulated (g)	Nonreg. (h)
	Central off-Trans							
2231	Radio systems							
2232	Circuit equipment							
2230	Transmission							
	Information O/T							
2311	Station apparatus							
2321	Customer prem wire							
2341	Large PBX							
2351	Public tel terminal							
2362	Other terminal							
2310	Information O/T							
	Cable & Wire Facil							
2411	Poles							
2421	Aerial cable							
2422	Underground cable							
2423	Buried cable							
2424	Submarine cable							
2425	Deep sea cable							
2426	Intrabldg ntwk cabl							
2431	Aerial wire							
2441	Conduit systems							
2410	Cable & wire facil							
	Amortizable Assets							
2681	Capital leases							
2682	Leasehold improve							
2680	Amort tangible asst							
2690	Intangibles							
2001	TPIS							
	OTHER INVESTMENTS							
2002	PHFTU			N/A		N/A		N/A
2003	TPUC-short term							
2004	TPUC-long term							
2005	Plant acquis adjust			N/A		N/A		N/A
1220	Material & supplies							
1438	Defer maint & retir							
1439	Deferred charges							
1500	Other jurisd assets							
230	Cash Working Capit	N/A	N/A	N/A	N/A	N/A	N/A	N/A
370	Total Investment							
	RESERVES							
	Accum Depreciation							
3100	Accum depreciation							
3200	Accum depr-PHFTU			N/A		N/A		N/A
	Accum Amortization							
3410	Accum amort-cap lse							
3420	Accum amort-lse imp							
3400	Accum amort-tangibl							
3500	Accum amort-intang							
3600	Accum amort-other							
	Deferred Ops Inc Tx							
4100	Net Current Defer							
4340	Net Noncurrent defe							
	Other Deductions							
4030	Adv bill & payments							
4040	Customers' deposits							
4120	Other accru liabil							
4360	Other deferred crs							
4370	Other jurisdiction							
495	Total Reserve							

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: txxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

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	Central off-Trans					
2231	Radio systems					N/A
2232	Circuit equipment					N/A
2230	Transmission					
	Information O/T					
2311	Station apparatus					N/A
2321	Customer prem wire					N/A
2341	Large PBX					N/A
2351	Public tel terminal					N/A
2362	Other terminal					N/A
2310	Information O/T					
	Cable & Wire Facil					
2411	Poles					N/A
2421	Aerial cable					N/A
2422	Underground cable					N/A
2423	Buried cable					N/A
2424	Submarine cable					N/A
2425	Deep sea cable					N/A
2426	Intrabldg ntwk cabl					N/A
2431	Aerial wire					N/A
2441	Conduit systems					N/A
2410	Cable & wire facil					
	Amortizable Assets					
2681	Capital leases					N/A
2682	Leasehold improve					N/A
2680	Amort tangible asst					
2690	Intangibles					
2001	TPIS					
	OTHER INVESTMENTS					
2002	PHFTU		N/A			
2003	TPUC-short term					
2004	TPUC-long term					
2005	Plant acquis adjust		N/A	N/A	N/A	
1220	Material & supplies					
1438	Defer maint & retir					
1439	Deferred charges					
1500	Other jurisd assets					
230	Cash Working Capit	N/A	N/A	N/A	N/A	
370	Total Investment					
	RESERVES					
	Accum Depreciation					
3100	Accum depreciation					
3200	Accum depr-PHFTU		N/A			
	Accum Amortization					
3410	Accum amort-cap lse					N/A
3420	Accum amort-lse imp					N/A
3400	Accum amort-tangibl					
3500	Accum amort-intang					
3600	Accum amort-other					
	Deferred Ops Inc Tx					
4100	Net Current Defer					
4340	Net Noncurrent defe					
	Other Deductions					
4030	Adv bill & payments					
4040	Customers' deposits					
4120	Other accru liabil					
4360	Other deferred crs					
4370	Other jurisdiction					
495	Total Reserve					

CERTIFICATION

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

A. Introduction

This document contains the detailed automated data processing (ADP) specifications for the automated report to be filed as FCC Report 43-03, the ARMIS Joint Cost Report.

B. General Format and Media

1. All data should be submitted on 5.25-inch double-sided double-density IBM-PC compatible diskettes.

2. All files should be coded in ASCII.

3. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

4. The file name for each file has six components:

   a. the four letter COSA code (CO = Company, SA = Study Area, see attached COSA Code Table for a list of companies and their respective COSAs).
   b. the last two digits of the year which is covered by the data.
   c. the letters "JC".
   d. a decimal point.
   e. the letter "P", "C", or "U" to indicate whether this is the Public version, the Confidential version, or the only (Unrestricted) version since all data is non-confidential.
   f. two digits (zero filled) for the submission number. Submission 0 is for test data purposes only. Submission 1 is for the first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission.

   For example, the file name for the Confidential Version of the initial Joint Cost Report data file to be submitted by Illinois Bell to cover the calendar year 1988, would be LBIL88JC.C01:

LBIL	COSA for Illinois Bell
88	Data for calendar year 1988
JC	Joint Cost Report data file
.	decimal point
C	Confidential version
01	First submission of this year's data

5. A separate file should be prepared for each report. More than one file can be placed on the same diskette, as long as they cover the same period, version, and submission number.

C. Data Entry Conventions

1. Standard accounting procedures will apply in determining the nature of any entry (e.g., each Uncollectible Revenue item, a debit entry, shall be entered as a "positive" number unless the balance therein reported is a credit). Entries of a reverse or contrary character shall be indicated by the placing of a minus sign in the column immediately preceding the numeric data, e.g., use -4, NOT - 4 or (4).

2. Begin each data record in column 1 and make each record the proper length as specified in the accompanying record layouts. Commas are used as delimiters between fields. All numeric fields are right justified and space filled, e.g. use ____123, NOT 123____. All non-numeric fields are enclosed in double quotation marks and are left justified and space filled within these quotation marks, e.g. use "John Doe ____".

3. Give each record a unique record number, beginning with 1001 and incrementing by one, with no numbers skipped.

4. Do NOT include "$" or "%" or embedded commas or decimal points in any numeric data fields, except for row number fields, which will include a decimal point and one decimal place.

5. In any numeric data field for which data is "Not Available", enter -99999. On the "Public Version" diskette in any numeric data field for which the data is "Withheld", enter -88888.

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all monetary figures must be rounded to the nearest thousand dollars.

E. Data Record Descriptions

The seven data record types are described below. See pages 5 through 15 for record layouts. The file will consist of one Type H1 record, followed by one Type L1 record, followed by 222 Type J1 records, followed by one or more Type C3 records, followed by zero or more Type F2 records, followed by zero or more Type E3 records, followed by one Type T1 record.

Record Type H1	Header Record	One Type H1 record per file. The first record of each file. Contains identifying data. See page 5 for record layout.
Record Type L1	Label Record	One Type L1 record per file. The second record of each file. Contains report number, carrier name, etc. See page 6 for record layout.
Record Type J1	Joint Cost Data Record	222 Type J1 records per file. One Type J1 record for each of the 222 rows shown on Pages 6 - 15 of the accompanying Report Definition. Each record contains data values for that particular account broken out by the columns described on Page 5 of the accompanying Report Definition. See pages 7 & 8 for record layout.
Record Type C3	Confidential Treatment Record	One or more Type C3 records per file. Contains information to identify the data for which the carrier is seeking confidential treatment or to verify that the carrier is <u>not</u> seeking any confidential treatment. See pages 9 & 10 for record layout.
Record Type F2	Footnote Record	Optional. Zero or more Type F2 records per file. Contains explanatory footnote text. See page 11 & 12 for record layout.

Record Type E3	Erratum Record	Zero Type E3 records in the first submission of a year's data. One or more Type E3 records per file in revisions filed to correct that year's submission. Contains information to identify the data which was corrected in this submission. See pages 13 & 14 for record layout.
Record Type T1	Trailer Record	One Type T1 record per file. The last record of each file. Contains contact person, etc. See page 15 for record layout.

RECORD TYPE H1 - HEADER RECORD

Field	Item	Example	Position	Description
1	Record Number	1001	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (see attached COSA Code Table) Format: include quotation marks.
3	Record Type	"H1"	13-16	Always contains the letter H capitalized and the number 1 with no space between them. Format: include quotation marks.
4	File Name	"LBIL88JC.C01"	18-31	The name of the ASCII file. Format: see page 1, paragraph B.4 above. include quotation marks.
5	Year	1988	33-36	The year covered by the data.
6	Quarter #	0	38	Always contains the number 0 since this is an annual data file.
7	Data Entry Date	19890315	40-47	The date on which the data was last entered or revised. Format: YYYYMMDD.
8	Version	"C"	49-51	The version letter (P, C or U) capitalized (for Public, Confidential or Unrestricted) Format: include quotation marks.
9	Submission #	1	53-54	0 for test data purposes only. 1 for first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission. Format: right justified and space filled.
10	End of Record Code	"XQ"	56-59	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas.
The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
         1         2         3         4         5          . . . . .   Ruler line
12345678901234567890123456789012345678901234567890123456789 . . . . .   Ruler line
Sample record:
1001,"LBIL","H1","LBIL88JC.C01",1988,0,19890315,"C", 1,"XQ"
```

RECORD TYPE L1 - LABEL RECORD

Field	Item	Example	Position	Description
1	Record Number	1002	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"L1"	13-16	Always contains the letter L capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Report Number	"FCC REPORT 43-03"	18-35	Always contains "FCC REPORT 43-03" capitalized. Format: include quotation marks.
5	Carrier	"Illinois Bell " (spaces until pos. 68)	37-68	Name of the carrier. Format: left justified and space filled. include quotation marks.
6	Study Area	"Illinois "	70-91	Name of the study area. Format: left justified and space filled. include quotation marks.
7	Period Covered	"Jan 1988 to Dec 1988"	93-114	Period covered by the data. Format: "mmm yyyy to mmm yyyy" include quotation marks.
8	End of Record Code	"XQ"	116-119	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
                                                                                                                  1         1
         1         2         3         4         5         6         7         8         9         0         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789
```

Sample record:

```
1002,"LBIL","L1","FCC REPORT 43-03","Illinois Bell                    ","Illinois                ","Jan 1988 to Dec 1988","XQ"
```

RECORD TYPE J1 - JOINT COST DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1003	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"J1"	13-16	Always contains the letter J capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	5001.0	18-23	Row number as identified on the accompanying Report Definition. Valid ranges: 230.0 to 750.0, 1220.0 to 7990.0. Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
5	Column (b) data	32592	25-33	This field contains the data corresponding to column (b) as shown on Pages 6 - 15 of the accompanying Report Definition. Format: right justified and space filled. Enter -99999 to indicate that the data is not available. Enter -88888 on the "public version" diskette to indicate that confidential treatment has been requested.
6	Column (c) data	5432	35-43	Column (c) data Format: see Field 5 above.
7	Column (d) data	5432	45-53	Column (d) data Format: see Field 5 above.
8	Column (e) data	5432	55-63	Column (e) data Format: see Field 5 above.
9	Column (f) data	5432	65-73	Column (f) data Format: see Field 5 above.
10	Column (g) data	5432	75-83	Column (g) data Format: see Field 5 above.
11	Column (h) data	5432	85-93	Column (h) data Format: see Field 5 above.

RECORD TYPE J1 - JOINT COST DATA RECORD (continued)

Field	Item	Example	Position	Description
12	Column (i) data	16296	95-103	Column (i) data Format: see Field 5 above.
13	Column (j) data	16296	105-113	Column (j) data Format: see Field 5 above.
14	Column (k) data	2716	115-123	Column (k) data Format: see Field 5 above.
15	Column (l) data	2716	125-133	Column (l) data Format: see Field 5 above.
16	Column (m) data	-99999	135-143	Column (m) data Format: see Field 5 above.
17	End of Record Code	"XQ"	145-148	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

If any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, add one or more Type F2 records (after the remaining Type J1 and C3 records) containing footnote text to explain the occasioning facts.

```
        1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234
Sample records:
1003,"LBIL","J1",5001.0,    32592,    5432,     5432,     5432,     5432,     5432,     5432,
1032,"LBIL","J1",5100.0,    32592,    5432,     5432,     5432,     5432,     5432,     5432,
```

```
    1         1         1         1         1
9   0         1         2         3         4
90123456789012345678901234567890123456789012345678
Continuation of sample records:
   16296,    16296,    2716,     2716,    -99999,"XQ"
   16296,    16296,    2716,     2716,     10864,"XQ"
```

RECORD TYPE C3 - CONFIDENTIAL TREATMENT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1224	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"C3"	13-16	Always contains the letter C capitalized and the number 3 with no space between them. Format: include quotation marks.
4	Record Number (for the confidential data)	1003	18-21	This field contains the record number of the record which contains the data for which the carrier is seeking confidential treatment. If the request is for an entire column, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the confidential data appears. Format: include quotation marks. left justified and space filled.
6	Row Number	5001.0	30-35	This field contains the row number of the row which contains the confidential data as identified in the accompanying Report Definition. If the request is for an entire column, enter 9999.0. Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
7	Column Label	"D "	37-40	This field contains the column letter of the confidential data as identified in the accompanying Report Definition. If the request is for an entire row, enter "ZZ". If the request is for more than one column but less than the entire row, then populate this field and as many as needed of fields 8 thru 17. If no confidential treatment is being requested, then enter " " in all of fields 7 thru 26. Format: include quotation marks. left justified and space filled.

RECORD TYPE C3 - CONFIDENTIAL TREATMENT RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"F "	42-45	.....
9	Third Column Label	"H "	47-50	. . Fields 8 thru 26 are similar
.				. to Field 7 and are used
.				. when the request is for
.				. the same row and more than
.				. one column.
26	Twentieth Col. Label	" "	132-135	..... Otherwise, enter " ".
				Note: Fields 18 thru 26 are not used in this record in this data file.
27	End of Record Code	"XQ"	137-140	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
        1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456
Sample records:
1224,"LBIL","C3",1003,"I   ",5001.0,"D ","F ","H ",,,,
```

RECORD TYPE F2 - FOOTNOTE TEXT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1229	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"F2"	13-16	Always contains the letter F capitalized and the number 2 with no space between them. Format: include quotation marks.
4	Record Number (for the footnoted data)	1003	18-21	This field contains the record number of the record which contains the footnoted data. If the footnote pertains to an entire column, an entire table, or the entire submission, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the footnoted data appears. If the footnote pertains to an entire table, use "ZZZZ". Format: include quotation marks. left justified and space filled.
6	Row Number	5001.0	30-35	This field contains the row number of the row which contains the footnoted data as identified in the accompanying Report Definition. If the footnote pertains to an entire column, an entire table, or the entire submission, enter 9999.0. Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
7	Column Label	"H "	37-40	This field contains the column letter of the footnoted data as identified in the accompanying Report Definition. If the footnote pertains to an entire row, an entire table, or the entire submission, enter "ZZ". Format: include quotation marks. left justified and space filled.

RECORD TYPE F2 - FOOTNOTE TEXT RECORD (continued)

Field	Item	Example	Position	Description
8	Footnote Number	1	42-43	The number of this particular footnote. Valid range: 1 to 99. Format: right justified and space filled.
9	Sequence Number	1	45-46	The sequence number of the record within the footnote. In other words, the order of the specific record in the sequence of records which, when combined, will provide the entire footnote. Valid range: 1 to 99. Format: right justified and space filled.
10	Footnote Text	"Footnote text " (spaces until pos. 104)	48-104	The text of the footnote or of the continuation line. Format: include quotation marks at the beginning and end of this field and left justify within these quotation marks.
11	End of Record Code	"XQ"	106-109	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
                                                                                                                                I
        1         2         3         4         5         6         7         8         9         0
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789
Sample records:
1229,"LBIL","F2",1003,"I   ",5001.0,"H ", 1, 1,"Footnote text for footnote 1                                  ","XQ"
1230,"LBIL","F2",1003,"I   ",5001.0,"H ", 1, 2,"continuation text for footnote 1                              ","XQ"
1231,"LBIL","F2",1003,"I   ",5001.0,"H ", 1, 3,"last line of footnote 1                                       ","XQ"
1232,"LBIL","F2",1032,"I   ",5100.0,"ZZ", 2, 1,"Footnote 2 pertains to all cols. of Table I row 5100          ","XQ"
1233,"LBIL","F2",9999,"I   ",9999.0,"K ", 3, 1,"Footnote 3 pertains to all rows of Table I column K           ","XQ"
1234,"LBIL","F2",9999,"I   ",9999.0,"M ", 4, 1,"Footnote 4 pertains to all rows of Table I column M           ","XQ"
```

RECORD TYPE E3 - ERRATUM RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1235	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"E3"	13-16	Always contains the letter E capitalized and the number 3 with no space between them. Format: include quotation marks.
4	Record Number (for the corrected data)	1003	18-21	This field contains the record number of the record which contains the data which was corrected in this submission. If an entire column, an entire table, or the entire submission was corrected, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the corrected data appears. If an entire table or submission was corrected, use "ZZZZ". Format: include quotation marks. left justified and space filled.
6	Row Number	5001.0	30-35	This field contains the row number of the of the row which contains the corrected data as identified in the accompanying Report Definition. If an entire column, an entire table, or the entire submission was corrected, enter 9999.0. Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
7	Column Label	"B "	37-40	This field contains the column letter of the corrected data as identified in the accompanying Report Definition. If an entire row, an entire table, or the entire submission was corrected, enter "ZZ". If more than one column but less than the entire row was corrected, then populate this field and as many as needed of fields 8 thru 17. Format: include quotation marks. left justified and space filled.

RECORD TYPE E3 - ERRATUM RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"H "	42-45	.....
9	Third Column Label	"J "	47-50	. Fields 8 thru 26 are similar
.				. to Field 7 and are used
.				. when the correction is in
.				. the same row and more than
.				. one column.
26	Twentieth Col. Label	" "	132-135	..... Otherwise, enter " ".
				Note: Fields 18 thru 26 are not used in this record in this data file.
27	Footnote Number	1	137-138	This field contains the footnote number that explains the correction. If there is no footnote, use a zero. Format: right justified and space filled.
28	End of Record Code	"XQ"	140-143	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
         1         2         3         4         5         6         7         8         9
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456
Sample records:
1235,"LBIL","E3",1003,"I   ",5001.0,"B ","H ","J ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1236,"LBIL","E3",1012,"I   ",5000.0,"B ","H ","J ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1237,"LBIL","E3",1032,"I   ",5100.0,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1238,"LBIL","E3",9999,"I   ",9999.0,"K ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1239,"LBIL","E3",9999,"I   ",9999.0,"M ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
```

```
  1         1         1         1         1
9 0         1         2         3         4
78901234567890123456789012345678901234567890123
Continuation of sample records:
" ","  ","  ","  ","  ","  ","  ","  ", 1,"XQ"
" ","  ","  ","  ","  ","  ","  ","  ", 0,"XQ"
" ","  ","  ","  ","  ","  ","  ","  ", 2,"XQ"
" ","  ","  ","  ","  ","  ","  ","  ", 3,"XQ"
" ","  ","  ","  ","  ","  ","  ","  ", 4,"XQ"
```

RECORD TYPE T1 - TRAILER RECORD

Field	Item	Example	Position	Description
1	Record Number	1240	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"T1"	13-16	Always contains the letter T capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Contact Person	"John Doe " (spaces until pos. 59)	18-59	The name of the person to contact if there are questions about the report. Format: include quotation marks.
5	Telephone #	"(202) 555-1212 x123 "	61-82	The Contact Person's telephone number. Format: include quotation marks.
6	End of Record Code	"XQ"	84-87	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

Sample record:

```
        1         2         3         4         5         6         7         8
12345678901234567890123456789012345678901234567890123456789012345678901234567

1240,"LBIL","T1","John Doe                                    ","(202) 555-1212 x123 ","XQ"
```

A. Introduction

This document contains the page layout and detailed specifications for the paper report to be filed as FCC Report 43-03, the ARMIS Joint Cost Report.

B. General Instructions

1. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

2. The Ruler Lines included on the page layouts with the column titles are included only to assist the reader. Do not include ruler lines as lines in the report.

C. Data Entry Conventions

1. Standard accounting procedures will apply in determining the nature of any entry (e.g., each Uncollectible Revenue item, a debit entry, shall be entered as a "positive" number unless the balance therein reported is a credit). Entries of a reverse or contrary character shall be indicated by the placing of a minus sign in the column immediately preceding the numeric data, e.g., use -4, NOT - 4 or (4).

2. In any numeric data field for which the data is "Not Available", enter N/A. On the "Public Version" report in any numeric data field for which the data is "Withheld", enter W/H.

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all monetary figures must be rounded to the nearest thousand dollars.

E. Page Layouts

The forty-four page layouts are illustrated on pages 3 through 46. The paper report will consist of the following pages, in order:

	Illustrated on Page
Table I Pages 1.1 through 1.4	3 - 6
Table I Pages 2.1 through 2.4	7 - 10
Table I Pages 3.1 through 3.4	11 - 14
Table I Pages 4.1 through 4.4	15 - 18
Table I Pages 5.1 through 5.4	19 - 22
Table I Pages 6.1 through 6.4	23 - 26
Table I Pages 7.1 through 7.4	27 - 30
Table I Pages 8.1 through 8.4	31 - 34
Table I Pages 9.1 through 9.4	35 - 38
Table I Pages 10.1 through 10.4	39 - 42
The Confidential Treatment Table (at least one page and as many pages as needed)	43
The Footnote Table (at least one page and as many pages as needed)	44
The Erratum Table (for submission number 2 or higher, as many pages as needed)	45
The Certification Page	46

FCC REPORT 43-03
ARMIS JOINT COST REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 1.1 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total	Directly Assigned		
			Regulated	Nonreg.	
	(a)	(b)	(c)	(d)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	REVENUES				
	Local Network Svcs				
5001	Basic area revenue				
5002	Optional ext area				
5003	Cellular mobile				
5004	Other mobile servic				
5010	Public telephone				
5040	Local private line				
5050	Customer premises				
5060	Other local exchang				
5069	Other local settles				
5000	Ba loc svc(Class B)				
	Network Access Svcs				
5081	End user			N/A	
5082	Switched access			N/A	
5083	Special access			N/A	
5084	State access			N/A	
5080	Network access			N/A	
	Toll Network Svcs				
5111	LD Inward-only				
5112	LD Outward-only				
5110	Unidirectional LD				

If applicable:
THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE.
SEE THE CONFIDENTIAL TREATMENT TABLE FOR SPECIFIC INFORMATION.

FCC REPORT 43-03
ARMIS JOINT COST REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 1.2 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Attributed		Generally Allocated	
		Regulated	Nonreg.	Regulated	Nonreg.
	(a)	(e)	(f)	(g)	(h)
1234	xxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	123,456,789
	REVENUES				
	Local Network Svcs				
5001	Basic area revenue				
5002	Optional ext area				
5003	Cellular mobile				
5004	Other mobile servic				
5010	Public telephone				
5040	Local private line				
5050	Customer premises				
5060	Other local exchang				
5069	Other local settles				
5000	Ba loc svc(Class B)				
	Network Access Svcs				
5081	End user		N/A		N/A
5082	Switched access		N/A		N/A
5083	Special access		N/A		N/A
5084	State access		N/A		N/A
5080	Network access		N/A		N/A
	Toll Network Svcs				
5111	LD Inward-only				
5112	LD Outward-only				
5110	Unidirectional LD				

... Ruler Lin

If applicable:
THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE.
SEE THE CONFIDENTIAL TREATMENT TABLE FOR SPECIFIC INFORMATION.

FCC REPORT 43-03
ARMIS JOINT COST REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 1.3 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total Regulated	Total Nonreg.	
	(a)	(i)	(j)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
	REVENUES			
	Local Network Svcs			
5001	Basic area revenue			
5002	Optional ext area			
5003	Cellular mobile			
5004	Other mobile servic			
5010	Public telephone			
5040	Local private line			
5050	Customer premises			
5060	Other local exchang			
5069	Other local settles			
5000	Ba loc svc(Class B)			
	Network Access Svcs			
5081	End user		N/A	
5082	Switched access		N/A	
5083	Special access		N/A	
5084	State access		N/A	
5080	Network access		N/A	
	Toll Network Svcs			
5111	LD Inward-only			
5112	LD Outward-only			
5110	Unidirectional LD			

If applicable:
THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE.
SEE THE CONFIDENTIAL TREATMENT TABLE FOR SPECIFIC INFORMATION.

FCC REPORT 43-03
ARMIS JOINT COST REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 1.4 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	SNFA and Intra-co. Adjustments	Other Adjustments	Subject to Separations	
	(a)	(k)	(l)	(m)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	REVENUES				
	Local Network Svcs				
5001	Basic area revenue			N/A	
5002	Optional ext area			N/A	
5003	Cellular mobile			N/A	
5004	Other mobile servic			N/A	
5010	Public telephone			N/A	
5040	Local private line			N/A	
5050	Customer premises			N/A	
5060	Other local exchang			N/A	
5069	Other local settles			N/A	
5000	Ba loc svc(Class B)				
	Network Access Svcs				
5081	End user				
5082	Switched access				
5083	Special access				
5084	State access				
5080	Network access				
	Toll Network Svcs				
5111	LD Inward-only			N/A	
5112	LD Outward-only			N/A	
5110	Unidirectional LD			N/A	

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ARMIS JOINT COST REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 2.1 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total	Directly Assigned		
			Regulated	Nonreg.	
	(a)	(b)	(c)	(d)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
5121	Subvce LD pvt ntwk				
5122	Vce LD pvt network				
5123	Audio LD pvt ntwk				
5124	Vidio LD pvt ntwk				
5125	Digital LD pvt ntwk				
5126	LD pvt ntwk switch				
5128	Other LD pvt ntwk				
5129	Other LD pvt settle				
5120	LD private network				
5160	Other LD				
5169	Other LD settlement				
5100	LD message revenue				
	Miscellaneous				
5230	Directory				
5240	Rent				
5250	Corporate operation				
5261	Special billing arr				
5262	Customer operations				
5263	Plant operations				
5264	Other incident reg				
5269	Other settlements				
5260	Misc. (Class A)				
5270	Carrier bill & coll				
5280	Other nonregulated				
5200	Miscellanous				
	Uncollectible revs				
5301	Uncollect-telecomm				
5302	Uncollect-other				
5300	Uncollectible rev				
530	Net Revenues				

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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Attributed		Generally Allocated	
		Regulated	Nonreg.	Regulated	Nonreg.
	(a)	(e)	(f)	(g)	(h)
1234	xxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	123,456,789
5121	Subvce LD pvt ntwk				
5122	Vce LD pvt network				
5123	Audio LD pvt ntwk				
5124	Vidio LD pvt ntwk				
5125	Digital LD pvt ntwk				
5126	LD pvt ntwk switch				
5128	Other LD pvt ntwk				
5129	Other LD pvt settle				
5120	LD private network				
5160	Other LD				
5169	Other LD settlement				
5100	LD message revenue				
	Miscellaneous				
5230	Directory				
5240	Rent				
5250	Corporate operation				
5261	Special billing arr				
5262	Customer operations				
5263	Plant operations				
5264	Other incident reg				
5269	Other settlements				
5260	Misc. (Class A)				
5270	Carrier bill & coll				
5280	Other nonregulated				
5200	Miscellanous				
	Uncollectible revs				
5301	Uncollect-telecomm				
5302	Uncollect-other				
5300	Uncollectible rev				
530	Net Revenues				

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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total Regulated	Total Nonreg.	
	(a)	(i)	(j)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
5121	Subvce LD pvt ntwk			
5122	Vce LD pvt network			
5123	Audio LD pvt ntwk			
5124	Vidio LD pvt ntwk			
5125	Digital LD pvt ntwk			
5126	LD pvt ntwk switch			
5128	Other LD pvt ntwk			
5129	Other LD pvt settle			
5120	LD private network			
5160	Other LD			
5169	Other LD settlement			
5100	LD message revenue			
	Miscellaneous			
5230	Directory			
5240	Rent			
5250	Corporate operation			
5261	Special billing arr			
5262	Customer operations			
5263	Plant operations			
5264	Other incident reg			
5269	Other settlements			
5260	Misc. (Class A)			
5270	Carrier bill & coll			
5280	Other nonregulated			
5200	Miscellanous			
	Uncollectible revs			
5301	Uncollect-telecomm			
5302	Uncollect-other			
5300	Uncollectible rev			
530	Net Revenues			

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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	SNFA and Intra-co. Adjustments	Other Adjustments	Subject to Separations	
	(a)	(k)	(l)	(m)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
5121	Subvce LD pvt ntwk			N/A	
5122	Vce LD pvt network			N/A	
5123	Audio LD pvt ntwk			N/A	
5124	Vidio LD pvt ntwk			N/A	
5125	Digital LD pvt ntwk			N/A	
5126	LD pvt ntwk switch			N/A	
5128	Other LD pvt ntwk			N/A	
5129	Other LD pvt settle			N/A	
5120	LD private network			N/A	
5160	Other LD			N/A	
5169	Other LD settlement			N/A	
5100	LD message revenue				
5230	Miscellaneous Directory			N/A	
5240	Rent			N/A	
5250	Corporate operation			N/A	
5261	Special billing arr			N/A	
5262	Customer operations			N/A	
5263	Plant operations			N/A	
5264	Other incident reg			N/A	
5269	Other settlements			N/A	
5260	Misc. (Class A)			N/A	
5270	Carrier bill & coll			N/A	
5280	Other nonregulated			N/A	
5200	Miscellanous				
5301	Uncollectible revs Uncollect-telecomm			N/A	
5302	Uncollect-other			N/A	
5300	Uncollectible rev				
530	Net Revenues				

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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total	Directly Assigned	
			Regulated	Nonreg.
	(a)	(b)	(c)	(d)
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789
	EXPENSES			
	Plant Specific			
6112	Motor vehicle			
6113	Aircraft			
6114	Special purpose veh			
6115	Garage work equip			
6116	Other work equip			
6110	Network support			
6121	Land & building			
6122	Furniture & artwork			
6123	Office equipment			
6124	Gen purpose comput			
6120	General support			
6211	Analog electronic			
6212	Digital electronic			
6215	Electro-mechanical			
6210	Central office-swit			
6220	Operator systems			
	Central office tran			
6231	Radio systems			
6232	Circuit equipment			
6230	Central office tran			
6311	Station apparatus			
6341	Large PBX			
6351	Public tel tmnl equ			
6362	Other terminal equi			
6310	Information O/T			

... Ruler Line

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COSA: xxxx PAGE 3.2 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Attributed		Generally Allocated	
		Regulated	Nonreg.	Regulated	Nonreg.
	(a)	(e)	(f)	(g)	(h)
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	123,456,789
	EXPENSES				
	Plant Specific				
6112	Motor vehicle				
6113	Aircraft				
6114	Special purpose veh				
6115	Garage work equip				
6116	Other work equip				
6110	Network support				
6121	Land & building				
6122	Furniture & artwork				
6123	Office equipment				
6124	Gen purpose comput				
6120	General support				
6211	Analog electronic				
6212	Digital electronic				
6215	Electro-mechanical				
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6220	Operator systems				
	Central office tran				
6231	Radio systems				
6232	Circuit equipment				
6230	Central office tran				
6311	Station apparatus				
6341	Large PBX				
6351	Public tel tmnl equ				
6362	Other terminal equi				
6310	Information O/T				

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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total Regulated	Total Nonreg.	
	(a)	(i)	(j)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
	EXPENSES			
	Plant Specific			
6112	Motor vehicle			
6113	Aircraft			
6114	Special purpose veh			
6115	Garage work equip			
6116	Other work equip			
6110	Network support			
6121	Land & building			
6122	Furniture & artwork			
6123	Office equipment			
6124	Gen purpose comput			
6120	General support			
6211	Analog electronic			
6212	Digital electronic			
6215	Electro-mechanical			
6210	Central office-swit			
6220	Operator systems			
	Central Office Tran			
6231	Radio systems			
6232	Circuit equipment			
6230	Central office tran			
6311	Station apparatus			
6341	Large PBX			
6351	Public tel tmnl equ			
6362	Other terminal equi			
6310	Information O/T			

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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	SNFA and Intra-co. Adjustments	Other Adjustments	Subject to Separations	
	(a)	(k)	(l)	(m)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	EXPENSES				
	Plant Specific				
6112	Motor vehicle			N/A	
6113	Aircraft			N/A	
6114	Special purpose veh			N/A	
6115	Garage work equip			N/A	
6116	Other work equip			N/A	
6110	Network support				
6121	Land & building			N/A	
6122	Furniture & artwork			N/A	
6123	Office equipment			N/A	
6124	Gen purpose comput			N/A	
6120	General support				
6211	Analog electronic			N/A	
6212	Digital electronic			N/A	
6215	Electro-mechanical			N/A	
6210	Central office-swit				
6220	Operator systems				
	Central Office Tran				
6231	Radio systems			N/A	
6232	Circuit equipment			N/A	
6230	Central office tran				
6311	Station apparatus			N/A	
6341	Large PBX			N/A	
6351	Public tel tmnl equ			N/A	
6362	Other terminal equi			N/A	
6310	Information O/T				

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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total	Directly Assigned		
			Regulated	Nonreg.	
	(a)	(b)	(c)	(d)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
6411	Poles				
6421	Aerial cable				
6422	Undgerground cable				
6423	Buried cable				
6424	Submarine cable				
6425	Deep sea cable				
6426	Intrabldg ntwk cabl				
6431	Aerial wire				
6441	Conduit systems				
6410	Cable & wire				
	Plant Non-Specific				
6511	PHFTU			N/A	
6512	Provisioning				
6510	Other PP&E expense				
6531	Power				
6532	Network administrat				
6533	Testing				
6534	Plant ops administr				
6535	Engineering				
6530	Network operations				
6540	Access				
	Depreciate/Amortize				
6561	Depreciation-TPIS				
6562	Depreciation-PHFTU				
6563	Amortization-tangib				
6564	Amortization-intang				
6565	Amortization-other				
6560	Depreciate/Amortize				

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(Dollars in thousands)

Row/ Acct. Number	Account Title	Attributed		Generally Allocated	
		Regulated	Nonreg.	Regulated	Nonreg.
	(a)	(e)	(f)	(g)	(h)
1234	xxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	123,456,789
6411	Poles				
6421	Aerial cable				
6422	Undgerground cable				
6423	Buried cable				
6424	Submarine cable				
6425	Deep sea cable				
6426	Intrabldg ntwk cabl				
6431	Aerial wire				
6441	Conduit systems				
6410	Cable & wire				
	Plant Non-Specific				
6511	PHFTU		N/A		N/A
6512	Provisioning				
6510	Other PP&E expense				
6531	Power				
6532	Network administrat				
6533	Testing				
6534	Plant ops administr				
6535	Engineering				
6530	Network operations				
6540	Access				
	Depreciate/Amortize				
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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total Regulated	Total Nonreg.	
	(a)	(i)	(j)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
6411	Poles			
6421	Aerial cable			
6422	Undgerground cable			
6423	Buried cable			
6424	Submarine cable			
6425	Deep sea cable			
6426	Intrabldg ntwk cabl			
6431	Aerial wire			
6441	Conduit systems			
6410	Cable & wire			
	Plant Non-Specific			
6511	PHFTU		N/A	
6512	Provisioning			
6510	Other PP&E expense			
6531	Power			
6532	Network administrat			
6533	Testing			
6534	Plant ops administr			
6535	Engineering			
6530	Network operations			
6540	Access			
	Depreciate/Amortize			
6561	Depreciation-TPIS			
6562	Depreciation-PHFTU			
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6560	Depreciate/Amortize			

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	(a)	(k)	(l)	(m)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
6411	Poles			N/A	
6421	Aerial cable			N/A	
6422	Undgerground cable			N/A	
6423	Buried cable			N/A	
6424	Submarine cable			N/A	
6425	Deep sea cable			N/A	
6426	Intrabldg ntwk cabl			N/A	
6431	Aerial wire			N/A	
6441	Conduit systems			N/A	
6410	Cable & wire				
	Plant Non-Specific				
6511	PHFTU			N/A	
6512	Provisioning			N/A	
6510	Other PP&E expense				
6531	Power			N/A	
6532	Network administrat			N/A	
6533	Testing			N/A	
6534	Plant ops administr			N/A	
6535	Engineering			N/A	
6530	Network operations				
6540	Access				
	Depreciate/Amortize				
6561	Depreciation-TPIS			N/A	
6562	Depreciation-PHFTU			N/A	
6563	Amortization-tangib			N/A	
6564	Amortization-intang			N/A	
6565	Amortization-other			N/A	
6560	Depreciate/Amortize				

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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total	Directly Assigned		
			Regulated	Nonreg.	
	(a)	(b)	(c)	(d)	
1234	xxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Customer Ops-Mkting				
6611	Product management				
6612	Sales				
6613	Product advertising				
6610	Marketing expense				
	Customer Ops-Servic				
6621	Call completion				
6622	Number services				
6623	Customer services				
6620	Services expense				
	Corporate Operation				
6711	Executive				
6712	Planning				
6710	Executive & plannin				
6721	Accounting & financ				
6722	External relations				
6723	Human resources				
6724	Information Managmt				
6725	Legal				
6726	Procurement				
6727	Research & develop				
6728	Other general & adm				
6720	General & administr				
6790	Prov uncollect note				

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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Attributed		Generally Allocated	
		Regulated	Nonreg.	Regulated	Nonreg.
	(a)	(e)	(f)	(g)	(h)
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	123,456,789
	Customer Ops-Mkting				
6611	Product management				
6612	Sales				
6613	Product advertising				
6610	Marketing expense				
	Customer Ops-Servic				
6621	Call completion				
6622	Number services				
6623	Customer services				
6620	Services expense				
	Corporate Operation				
6711	Executive				
6712	Planning				
6710	Executive & plannin				
6721	Accounting & financ				
6722	External relations				
6723	Human resources				
6724	Information Managmt				
6725	Legal				
6726	Procurement				
6727	Research & develop				
6728	Other general & adm				
6720	General & administr				
6790	Prov uncollect note				

... Ruler Li

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COSA: xxxx PAGE 5.3 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total Regulated	Total Nonreg.	
	(a)	(i)	(j)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
	Customer Ops-Mkting			
6611	Product management			
6612	Sales			
6613	Product advertising			
6610	Marketing expense			
	Customer Ops-Servic			
6621	Call completion			
6622	Number services			
6623	Customer services			
6620	Services expense			
	Corporate Operation			
6711	Executive			
6712	Planning			
6710	Executive & plannin			
6721	Accounting & financ			
6722	External relations			
6723	Human resources			
6724	Information Managmt			
6725	Legal			
6726	Procurement			
6727	Research & develop			
6728	Other general & adm			
6720	General & administr			
6790	Prov uncollect note			

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ARMIS JOINT COST REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 5.4 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	SNFA and Intra-co. Adjustments	Other Adjustments	Subject to Separations	
	(a)	(k)	(l)	(m)	
1234	xxxxxxxxxxxxxxxxxx Customer Ops-Mkting	123,456,789	123,456,789	123,456,789	... Ruler Line
6611	Product management			N/A	
6612	Sales			N/A	
6613	Product advertising			N/A	
6610	Marketing expense				
	Customer Ops-Servic				
6621	Call completion			N/A	
6622	Number services			N/A	
6623	Customer services			N/A	
6620	Services expense				
	Corporate Operation				
6711	Executive			N/A	
6712	Planning			N/A	
6710	Executive & plannin				
6721	Accounting & financ			N/A	
6722	External relations			N/A	
6723	Human resources			N/A	
6724	Information Managmt			N/A	
6725	Legal			N/A	
6726	Procurement			N/A	
6727	Research & develop			N/A	
6728	Other general & adm			N/A	
6720	General & administr				
6790	Prov uncollect note				

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PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 6.1 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total	Directly Assigned	
			Regulated	Nonreg.
	(a)	(b)	(c)	(d)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Other Ops Inc/Expen				
7110	Income custom work				
7130	Return nonreg use				
7140	Gain/loss foreign				
7150	Gain/loss land/art				
7160	Other ops gain/loss				
7100	Other ops inc/expen				
	Operating Taxes				
7210	Ops inv tax cr-net				
7220	Ops federal inc tax				
7230	Ops state & local				
7240	Ops other taxes				
7250	Prov defer inc tax				
7200	Operating taxes				
	Nonops income/expen				
7310	Dividend income				
7320	Interest income				
7330	Inc sinking/other				
7340	AFUDC				
7350	Gain/loss property				
7360	Other nonops income				
7370	Special charges				
7300	Nonops income/expen				
7410	Nonops inv tx cr-nt				
7420	Nonops fed inc tax				
7430	Nonops state & locl				
7440	Nonops other taxes				
7450	Prov defer tax-net				
7400	Nonoperating taxes				

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PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 6.2 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Attributed		Generally Allocated		
		Regulated	Nonreg.	Regulated	Nonreg.	
	(a)	(e)	(f)	(g)	(h)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	123,456,789	... Ruler Line
	Other Ops Inc/Expen					
7110	Income custom work					
7130	Return nonreg use					
7140	Gain/loss foreign					
7150	Gain/loss land/art					
7160	Other ops gain/loss					
7100	Other ops inc/expen					
	Operating Taxes					
7210	Ops inv tax cr-net					
7220	Ops federal inc tax					
7230	Ops state & local					
7240	Ops other taxes					
7250	Prov defer inc tax					
7200	Operating taxes					
	Nonops income/expen					
7310	Dividend income					
7320	Interest income					
7330	Inc sinking/other					
7340	AFUDC					
7350	Gain/loss property					
7360	Other nonops income					
7370	Special charges					
7300	Nonops income/expen					
7410	Nonops inv tx cr-nt					
7420	Nonops fed inc tax					
7430	Nonops state & locl					
7440	Nonops other taxes					
7450	Prov defer tax-net					
7400	Nonoperating taxes					

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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total Regulated	Total Nonreg.	
	(a)	(i)	(j)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
	Other Ops Inc/Expen			
7110	Income custom work			
7130	Return nonreg use			
7140	Gain/loss foreign			
7150	Gain/loss land/art			
7160	Other ops gain/loss			
7100	Other ops inc/expen			
	Operating Taxes			
7210	Ops inv tax cr-net			
7220	Ops federal inc tax			
7230	Ops state & local			
7240	Ops other taxes			
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7310	Dividend income			
7320	Interest income			
7330	Inc sinking/other			
7340	AFUDC			
7350	Gain/loss property			
7360	Other nonops income			
7370	Special charges			
7300	Nonops income/expen			
7410	Nonops inv tx cr-nt			
7420	Nonops fed inc tax			
7430	Nonops state & locl			
7440	Nonops other taxes			
7450	Prov defer tax-net			
7400	Nonoperating taxes			

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COSA: xxxx PAGE 6.4 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	SNFA and Intra-co. Adjustments	Other Adjustments	Subject to Separations	
	(a)	(k)	(l)	(m)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Other Ops Inc/Expen				
7110	Income custom work			N/A	
7130	Return nonreg use			N/A	
7140	Gain/loss foreign			N/A	
7150	Gain/loss land/art			N/A	
7160	Other ops gain/loss			N/A	
7100	Other ops inc/expen				
	Operating Taxes				
7210	Ops inv tax cr-net			N/A	
7220	Ops federal inc tax			N/A	
7230	Ops state & local			N/A	
7240	Ops other taxes			N/A	
7250	Prov defer inc tax			N/A	
7200	Operating taxes				
	Nonops income/expen				
7310	Dividend income			N/A	
7320	Interest income			N/A	
7330	Inc sinking/other			N/A	
7340	AFUDC			N/A	
7350	Gain/loss property			N/A	
7360	Other nonops income			N/A	
7370	Special charges			N/A	
7300	Nonops income/expen				
7410	Nonops inv tx cr-nt			N/A	
7420	Nonops fed inc tax			N/A	
7430	Nonops state & locl			N/A	
7440	Nonops other taxes			N/A	
7450	Prov defer tax-net			N/A	
7400	Nonoperating taxes				

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STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 7.1 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total	Directly Assigned		
			Regulated	Nonreg.	
	(a)	(b)	(c)	(d)	
1234	xxxxxxxxxxxxxxxxxx Int & Related Items	123,456,789	123,456,789	123,456,789	... Ruler Line
7510	Int on funded debt				
7520	Int exp-cap leases				
7530	Amort debt issuance				
7540	Other interest ded				
7500	Int & related items				
	Extraordinary Items				
7610	Extraord income crs				
7620	Extraord income chg				
7630	Current inc tax eff				
7640	Prov defer tax-net				
7600	Extraordinary items				
7910	Inc effcts diff-net				
7990	Nonreg net income		N/A		
	Adjustments				
740	IRS income adjust				
750	Total Expenses				

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PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 7.2 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Attributed		Generally Allocated	
		Regulated	Nonreg.	Regulated	Nonreg.
	(a)	(e)	(f)	(g)	(h)
1234	xxxxxxxxxxxxxxxxxx Int & Related Items	123,456,789	123,456,789	123,456,789	123,456,789
7510	Int on funded debt				
7520	Int exp-cap leases				
7530	Amort debt issuance				
7540	Other interest ded				
7500	Int & related items				
	Extraordinary Items				
7610	Extraord income crs				
7620	Extraord income chg				
7630	Current inc tax eff				
7640	Prov defer tax-net				
7600	Extraordinary items				
7910	Inc effcts diff-net				
7990	Nonreg net income	N/A		N/A	
	Adjustments				
740	IRS income adjust				
750	Total Expenses				

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PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 7.3 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total Regulated	Total Nonreg.	
	(a)	(i)	(j)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
	Int & Related Items			
7510	Int on funded debt			
7520	Int exp-cap leases			
7530	Amort debt issuance			
7540	Other interest ded			
7500	Int & related items			
	Extraordinary Items			
7610	Extraord income crs			
7620	Extraord income chg			
7630	Current inc tax eff			
7640	Prov defer tax-net			
7600	Extraordinary items			
7910	Inc effcts diff-net			
7990	Nonreg net income	N/A		
	Adjustments			
740	IRS income adjust			
750	Total Expenses			

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PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 7.4 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	SNFA and Intra-co. Adjustments	Other Adjustments	Subject to Separations	
	(a)	(k)	(l)	(m)	
1234	xxxxxxxxxxxxxxxxxx Int & Related Items	123,456,789	123,456,789	123,456,789	... Ruler Line
7510	Int on funded debt			N/A	
7520	Int exp-cap leases			N/A	
7530	Amort debt issuance			N/A	
7540	Other interest ded			N/A	
7500	Int & related items				
	Extraordinary Items				
7610	Extraord income crs			N/A	
7620	Extraord income chg			N/A	
7630	Current inc tax eff			N/A	
7640	Prov defer tax-net			N/A	
7600	Extraordinary items				
7910	Inc effcts diff-net				
7990	Nonreg net income	N/A	N/A	N/A	
	Adjustments				
740	IRS income adjust	N/A	N/A		
750	Total Expenses				

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PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 8.1 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total	Directly Assigned		
			Regulated	Nonreg.	
	(a)	(b)	(c)	(d)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	PLANT-IN-SERVICE				
	Support Plant				
2111	Land				
2112	Motor vehicles				
2113	Aircraft				
2114	Special purpose veh				
2115	Garage work equip				
2116	Other work equip				
2121	Buildings				
2122	Furniture				
2123	Office equipment				
2124	Gen purpose comput				
2110	Land & support				
	Central Off-Switch				
2211	Analog elect switch				
2212	Digit elect switch				
2215	Electro-mech switch				
2210	Central off switch				
2220	Operator systems				

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PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 8.2 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Attributed		Generally Allocated	
		Regulated	Nonreg.	Regulated	Nonreg.
	(a)	(e)	(f)	(g)	(h)
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	123,456,789
	PLANT-IN-SERVICE				
	Support Plant				
2111	Land				
2112	Motor vehicles				
2113	Aircraft				
2114	Special purpose veh				
2115	Garage work equip				
2116	Other work equip				
2121	Buildings				
2122	Furniture				
2123	Office equipment				
2124	Gen purpose comput				
2110	Land & support				
	Central Off-Switch				
2211	Analog elect switch				
2212	Digit elect switch				
2215	Electro-mech switch				
2210	Central off switch				
2220	Operator systems				

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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total Regulated	Total Nonreg.	
	(a)	(i)	(j)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
	PLANT-IN-SERVICE			
	Support Plant			
2111	Land			
2112	Motor vehicles			
2113	Aircraft			
2114	Special purpose veh			
2115	Garage work equip			
2116	Other work equip			
2121	Buildings			
2122	Furniture			
2123	Office equipment			
2124	Gen purpose comput			
2110	Land & support			
	Central Off-Switch			
2211	Analog elect switch			
2212	Digit elect switch			
2215	Electro-mech switch			
2210	Central off switch			
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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	SNFA and Intra-co. Adjustments	Other Adjustments	Subject to Separations	
	(a)	(k)	(l)	(m)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	PLANT-IN-SERVICE				
	Support Plant				
2111	Land			N/A	
2112	Motor vehicles			N/A	
2113	Aircraft			N/A	
2114	Special purpose veh			N/A	
2115	Garage work equip			N/A	
2116	Other work equip			N/A	
2121	Buildings			N/A	
2122	Furniture			N/A	
2123	Office equipment			N/A	
2124	Gen purpose comput			N/A	
2110	Land & support				
	Central Off-Switch				
2211	Analog elect switch			N/A	
2212	Digit elect switch			N/A	
2215	Electro-mech switch			N/A	
2210	Central off switch				
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TABLE I - REGULATED/NONREGULATED DATA
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Row/ Acct. Number	Account Title	Total	Directly Assigned		
			Regulated	Nonreg.	
	(a)	(b)	(c)	(d)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Central off-Trans				
2231	Radio systems				
2232	Circuit equipment				
2230	Transmission				
	Information O/T				
2311	Station apparatus				
2321	Customer prem wire				
2341	Large PBX				
2351	Public tel terminal				
2362	Other terminal				
2310	Information O/T				
	Cable & Wire Facil				
2411	Poles				
2421	Aerial cable				
2422	Underground cable				
2423	Buried cable				
2424	Submarine cable				
2425	Deep sea cable				
2426	Intrabldg ntwk cabl				
2431	Aerial wire				
2441	Conduit systems				
2410	Cable & wire facil				
	Amortizable Assets				
2681	Capital leases				
2682	Leasehold improve				
2680	Amort tangible asst				
2690	Intangibles				
2001	TPIS				

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(Dollars in thousands)

Row/ Acct. Number	Account Title	Attributed		Generally Allocated	
		Regulated	Nonreg.	Regulated	Nonreg.
	(a)	(e)	(f)	(g)	(h)
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	123,456,789
	Central off-Trans				
2231	Radio systems				
2232	Circuit equipment				
2230	Transmission				
	Information O/T				
2311	Station apparatus				
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2341	Large PBX				
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2310	Information O/T				
	Cable & Wire Facil				
2411	Poles				
2421	Aerial cable				
2422	Underground cable				
2423	Buried cable				
2424	Submarine cable				
2425	Deep sea cable				
2426	Intrabldg ntwk cabl				
2431	Aerial wire				
2441	Conduit systems				
2410	Cable & wire facil				
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2680	Amort tangible asst				
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2001	TPIS				

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COSA: xxxx PAGE 9.3 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total Regulated	Total Nonreg.	
	(a)	(i)	(j)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
	Central off-Trans			
2231	Radio systems			
2232	Circuit equipment			
2230	Transmission			
	Information O/T			
2311	Station apparatus			
2321	Customer prem wire			
2341	Large PBX			
2351	Public tel terminal			
2362	Other terminal			
2310	Information O/T			
	Cable & Wire Facil			
2411	Poles			
2421	Aerial cable			
2422	Underground cable			
2423	Buried cable			
2424	Submarine cable			
2425	Deep sea cable			
2426	Intrabldg ntwk cabl			
2431	Aerial wire			
2441	Conduit systems			
2410	Cable & wire facil			
	Amortizable Assets			
2681	Capital leases			
2682	Leasehold improve			
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SEE THE CONFIDENTIAL TREATMENT TABLE FOR SPECIFIC INFORMATION.

FCC REPORT 43-03
ARMIS JOINT COST REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 9.4 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	SNFA and Intra-co. Adjustments	Other Adjustments	Subject to Separations	
	(a)	(k)	(l)	(m)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Central off-Trans				
2231	Radio systems			N/A	
2232	Circuit equipment			N/A	
2230	Transmission				
	Information O/T				
2311	Station apparatus			N/A	
2321	Customer prem wire			N/A	
2341	Large PBX			N/A	
2351	Public tel terminal			N/A	
2362	Other terminal			N/A	
2310	Information O/T				
	Cable & Wire Facil				
2411	Poles			N/A	
2421	Aerial cable			N/A	
2422	Underground cable			N/A	
2423	Buried cable			N/A	
2424	Submarine cable			N/A	
2425	Deep sea cable			N/A	
2426	Intrabldg ntwk cabl			N/A	
2431	Aerial wire			N/A	
2441	Conduit systems			N/A	
2410	Cable & wire facil				
	Amortizable Assets				
2681	Capital leases			N/A	
2682	Leasehold improve			N/A	
2680	Amort tangible asst				
2690	Intangibles				
2001	TPIS				

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 10.1 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total	Directly Assigned		
			Regulated	Nonreg.	
	(a)	(b)	(c)	(d)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	OTHER INVESTMENTS				
2002	PHFTU			N/A	
2003	TPUC-short term				
2004	TPUC-long term				
2005	Plant acquis adjust			N/A	
1220	Material & supplies				
1438	Defer maint & retir				
1439	Deferred charges				
1500	Other jurisd assets				
230	Cash Working Capit	N/A	N/A	N/A	
370	Total Investment				
	RESERVES				
	Accum Depreciation				
3100	Accum depreciation				
3200	Accum depr-PHFTU			N/A	
	Accum Amortization				
3410	Accum amort-cap lse				
3420	Accum amort-lse imp				
3400	Accum amort-tangibl				
3500	Accum amort-intang				
3600	Accum amort-other				
	Deferred Ops Inc Tx				
4100	Net Current Defer				
4340	Net Noncurrent defe				
	Other Deductions				
4030	Adv bill & payments				
4040	Customers' deposits				
4120	Other accru liabil				
4360	Other deferred crs				
4370	Other jurisdiction				
495	Total Reserve				

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 10.2 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Attributed		Generally Allocated		
		Regulated	Nonreg.	Regulated	Nonreg.	
	(a)	(e)	(f)	(g)	(h)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	123,456,789	... Ruler Line
	OTHER INVESTMENTS					
2002	PHFTU		N/A		N/A	
2003	TPUC-short term					
2004	TPUC-long term					
2005	Plant acquis adjust		N/A		N/A	
1220	Material & supplies					
1438	Defer maint & retir					
1439	Deferred charges					
1500	Other jurisd assets					
230	Cash Working Capit	N/A	N/A	N/A	N/A	
370	Total Investment					
	RESERVES					
	Accum Depreciation					
3100	Accum depreciation					
3200	Accum depr-PHFTU		N/A		N/A	
	Accum Amortization					
3410	Accum amort-cap lse					
3420	Accum amort-lse imp					
3400	Accum amort-tangibl					
3500	Accum amort-intang					
3600	Accum amort-other					
	Deferred Ops Inc Tx					
4100	Net Current Defer					
4340	Net Noncurrent defe					
	Other Deductions					
4030	Adv bill & payments					
4040	Customers' deposits					
4120	Other accru liabil					
4360	Other deferred crs					
4370	Other jurisdiction					
495	Total Reserve					

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 10.3 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total Regulated	Total Nonreg.	
	(a)	(i)	(j)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
	OTHER INVESTMENTS			
2002	PHFTU		N/A	
2003	TPUC-short term			
2004	TPUC-long term			
2005	Plant acquis adjust		N/A	
1220	Material & supplies			
1438	Defer maint & retir			
1439	Deferred charges			
1500	Other jurisd assets			
230	Cash Working Capit	N/A	N/A	
370	Total Investment			
	RESERVES			
	Accum Depreciation			
3100	Accum depreciation			
3200	Accum depr-PHFTU		N/A	
	Accum Amortization			
3410	Accum amort-cap lse			
3420	Accum amort-lse imp			
3400	Accum amort-tangibl			
3500	Accum amort-intang			
3600	Accum amort-other			
	Deferred Ops Inc Tx			
4100	Net Current Defer			
4340	Net Noncurrent defe			
	Other Deductions			
4030	Adv bill & payments			
4040	Customers' deposits			
4120	Other accru liabil			
4360	Other deferred crs			
4370	Other jurisdiction			
495	Total Reserve			

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 10.4 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	SNFA and Intra-co. Adjustments	Other Adjustments	Subject to Separations	
	(a)	(k)	(l)	(m)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	OTHER INVESTMENTS				
2002	PHFTU				
2003	TPUC-short term				
2004	TPUC-long term				
2005	Plant acquis adjust	N/A	N/A		
1220	Material & supplies				
1438	Defer maint & retir				
1439	Deferred charges				
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230	Cash Working Capit	N/A	N/A		
370	Total Investment				
	RESERVES				
	Accum Depreciation				
3100	Accum depreciation				
3200	Accum depr-PHFTU				
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3410	Accum amort-cap lse			N/A	
3420	Accum amort-lse imp			N/A	
3400	Accum amort-tangibl				
3500	Accum amort-intang				
3600	Accum amort-other				
	Deferred Ops Inc Tx				
4100	Net Current Defer				
4340	Net Noncurrent defe				
	Other Deductions				
4030	Adv bill & payments				
4040	Customers' deposits				
4120	Other accru liabil				
4360	Other deferred crs				
4370	Other jurisdiction				
495	Total Reserve				

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FCC REPORT 43-03
ARMIS JOINT COST REPORT

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3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy CONF. TREATMENT TABLE
COSA: xxxx PAGE 1 OF x

CONFIDENTIAL TREATMENT TABLE

Table	Row	Column(s)	
(a)	(b)	(c)	
xxxx	1234.1	x, x, x, x, x, x, x, x, x, x, x	... Ruler Line

sample entries:

I	5001	D, F, H
I	5000	D, F, H
I	5100	ALL
I	ALL	L
I	ALL	M

THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR THE ABOVE DATA
IN THIS REPORT.

-OR-

THE COMPANY HAS NOT REQUESTED CONFIDENTIAL TREATMENT FOR ANY DATA
IN THIS REPORT.

FCC REPORT 43-03
ARMIS JOINT COST REPORT

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3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
FOOTNOTE TABLE
PAGE 1 OF x

FOOTNOTE TABLE

Table	Row	Col	FN#	Footnote
(a)	(b)	(c)	(d)	(e)
xxxx	1234.1	xxx	12	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx ... Ruler Line

sample entries:

I	5001	H	1	Footnote text for footnote 1 continuation text for footnote 1 last line of footnote 1
I	5100	ALL	2	Footnote 2 pertains to all cols. of Table I row 5100
I	ALL	K	3	Footnote 3 pertains to all rows of Table I column K
I	ALL	M	4	Footnote 4 pertains to all rows of Table I column M

-OR-

THERE ARE NO FOOTNOTES FOR THIS SUBMISSION.

FCC REPORT 43-03
ARMIS JOINT COST REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
ERRATUM TABLE
PAGE 1 OF x

ERRATUM TABLE

Table	Row	Column(s)	FN#	
(a)	(b)	(c)	(d)	
xxxx	1234.1	x, x, x, x, x, x, x, x, x, x, x	12	... Ruler Line

sample entries:

I	5001	B, H, J	1
I	5000	B, H, J	
I	5100	ALL	2
I	ALL	K	3
I	ALL	M	4

THE ABOVE DATA HAS BEEN CORRECTED IN THIS SUBMISSION.
SEE THE FOOTNOTE TABLE FOR FOOTNOTES WHERE APPLICABLE.

CERTIFICATION

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

DIVESTED BOC INDEX

Holding Company	Operating Company	Study Area	Study Area Code
Ameritech			AMTR
	1. Illinois Bell	- Illinois	LBIL
	2. Indiana Bell	- Indiana	NBIN
	3. Michigan Bell	- Michigan	MBMI
	4. Ohio Bell	- Ohio	OBOH
	5. Wisconsin Bell	- Wisconsin	WTWI
Bell Atlantic			BATR
	1. Chesapeake and Potomac		CPTC
		- Dist. of Columbia	CDDC
		- Maryland	CMMD
		- Virginia	CVVA
		- West Virginia	CWWV
	2. Diamond State Telephone	- Delaware	DSDE
	3. Bell of Pennsylvania	- Pennsylvania	PAPA
	4. New Jersey Bell	- New Jersey	NJNJ
Bell South			BSTR
	1. Southern Bell		SBTC
		- Florida	SBFL
		- Georgia	SBGA
		- North Carolina	SBNC
		- South Carolina	SBSC
	2. South Central Bell		SCTC
		- Alabama	SCAL
		- Kentucky	SCKY
		- Louisiana	SCLA
		- Mississippi	SCMS
		- Tennessee	SCTN
NYNEX			NXTR
	1. New England Telephone		NETC
		- Maine	NEME
		- Massachusetts	NEMA
		- New Hampshire	NENH
		- Rhode Island	NERI
		- Vermont	NEVT
	2. New York Telephone	- New York	NYNY
Pacific Telesis			PTTR
	1. Pacific Bell	- California	PTCA
	2. Nevada Bell	- Nevada	PTNV
Southwestern Bell Telephone Company			SWTR
		- Arkansas	SWAR
		- Kansas	SWKS
		- Missouri	SWMO
		- Oklahoma	SWOK
		- Texas	SWTX

Holding Company	Operating Company	Study Area	Study Area Code
U.S. West			USTR
	1. Mountain Bell		MSTC
		- Arizona	MSAZ
		- Colorado	MSCO
		- Idaho	MSID
		- Montana	MSMT
		- New Mexico	MSNM
		- Utah	MSUT
		- Wyoming	MSWY
	2. Northwestern Bell		NWTC
		- Iowa	NWIA
		- Minnesota	NWMN
		- Nebraska	NWNE
		- North Dakota	NWND
		- South Dakota	NWSD
	3. Pacific Northwest Bell		PNTC
		- Idaho	PNID
		- Oregon	PNOR
		- Washington	PNWA
Total Divested Bell Operating Companies			TBOC

INDEPENDENT COMPANY INDEX

Holding Company	Operating Company	Study Area	Study Area Code
Alascom, Inc.		- Alaska	AKAK
Central Telephone Company			CETC
	1. of Florida	- Florida	CEFL
	2. of Illinois	- Illinois	CEIL
	3. of Nevada	- Nevada	CENV
	4. of Virginia	- Virginia	CEVA
Cincinnati Bell Telephone	- Ohio & Kentucky		CBTC
Continental Telephone Company			COTC
	1. Contel of California	- California	COCA
	2. Contel of Illinois	- Illinois	COIL
	3. Contel of Missouri	- Missouri	COMO
	4. Contel of New York	- New York	CONY
	5. Contel of Texas	- Texas	COTX
	6. Contel of Virginia	- Virginia	COVA
GTE Telephone Operating Companies			GTTC
1. General Telephone Company of California		- California	GTCA
2. General Telephone Company of Florida		- Florida	GTFL
3. General Telephone Company of the Northwest, Inc.			GTNW
		- Idaho & Montana	GTNA
		- Idaho	GTID
		- Montana	GTMT
		- OR, WA & Wstn CA	GTNB
		- Oregon	GTOR
		- Washington	GTWA
		- CA - West Coast	GNCA
4. General Telephone Company of the South			GTSO
		- Alabama	GTAL
		- Georgia	GTGA
		- Kentucky	GTKY
		- North Carolina	GTNC
		- South Carolina	GTSC
		- Tennessee	GTTN
		- Virginia	GTVA
		- West Virginia	GTWV

Holding Company	Operating Company	Study Area	Study Area Code
	5. General Telephone Company of the Southwest		GTSW
		- Arkansas	GTAR
		- New Mexico	GTNM
		- Oklahoma	GTOK
		- Texas	GTTX
	6. GTE of the North, Inc.		GTMW
		- Illinois	GTIL
		- Indiana	GTIN
		- Iowa	GTIA
		- Michigan	GTMI
		- Minnesota	GTMN
		- Missouri	GTMO
		- Nebraska (also serving Kansas)	GTNE
		- Ohio	GTOH
		- Pennsylvania	GTPA
		- Wisconsin	GTWI
	7. Hawaiian Telephone Company	- Hawaii	GTHI
Lincoln Telephone Company		- Nebraska	LTNE
Puerto Rico Telephone Company		- Puerto Rico	PRPR
Rochester Telephone Corporation		- New York	RTNY
Southern New England Telephone		- Connecticut	SNCT
United Telephone System			UTTC
	1. United Tel. Co. of Florida	- Florida	UTFL
	2. United Tel. Co. of Indiana	- Indiana	UTIN
	3. United Tel. Co. of Missouri	- Missouri	UTMO
	4. Carolina Tel. and Tel. Co.	- North Carolina	UTNC
	5. United Tel. Co. of Ohio	- Ohio	UTOH
	6. United Tel. Co. of Penn.	- Pennsylvania	UTPA
	7. United Inter-Mountain Tel. Co.		UTIM
		- Tennessee	UTTN
		- Virginia	UTVA
Total Independent Companies			TICO
Total Industry			TOTL

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY
CICI, INC.
FTC COMMUNICATIONS, INC.
MCI INTERNATIONAL, INC.
TRT TELECOMMUNICATIONS CORPORATION
US SPRINT COMMUNICATIONS COMPANY
WU WORLD COMMUNICATIONS, INC.

File No. I-T-C-88-181

Joint Application for Authorization Under Section 214 of the Communications Act of 1934, as Amended, to Construct, Assign Capacity in and Operate a High Capacity, Digital Submarine Cable System Between and Among the United States, Canada, the United Kingdom, France and Spain.

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: December 15, 1988; Released: December 27, 1988

By the Chief, Common Carrier Bureau:

1. We are considering the above-captioned Joint Application, filed on August 4, 1988, by several United States International Service Carriers (USISCs) requesting for authority, pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. Section 214 (1982), to construct and operate the TAT-9 high capacity digital, optical fiber submarine cable system. TAT-9 will extend between points in or reached via the United States and Canada on the west end and points in or reached via the United Kingdom, France and Spain on the east end. The USISCs also request authority to (1) acquire capacity in the TAT-9 cable system; (2) acquire, by lease, such extension facilities as may be required to extend capacity in TAT-9; (3) convey capacity in TAT-9 to foreign administrations on an ownership or indefeasible right of user (IRU) basis; and (4) activate and operate capacity in TAT-9 and in the aforementioned extension facilities for the provision of their respectively authorized telecommunications services. The cable system will be jointly owned by the USISCs, the telecommunications administrations of seventeen European countries who are members of the CEPT,[1] and a number of other foreign telecommunications entities in Australia, Canada, Japan, Mexico, New Zealand and the Philippines.[2] The proposed TAT-9 cable is planned to be in service in October, 1991.

2. The subject Application was placed on public notice on August 10, 1988. In response to the notice, Private Transatlantic Telecommunications System, Inc. (PSI), filed comments accompanied by a Petition for Rule Making. Cable and Wireless North America, Inc. (Cable and Wireless) filed a letter in response to PSI's filings. Reply comments were then submitted by the Joint Applicants and TRT Telecommunications Corporation (TRT) individually. PSI filed responsive comments to the reply comments.

3. Based on our review of the Application and in view of the Commission's determinations in Docket No. 79-184, [3] we grant the Application.

I. DESCRIPTION OF PROPOSED FACILITIES

4. According to the Applicants, TAT-9 will be used to supplement the USISCs' existing facilities in the provision of service between points in or reached via the U.S. mainland and points in or reached via the U.K., France and Spain.[4] The TAT-9 cable system, attached as Appendix 2, will be connected in the U.S., Canada, the U.K., France and Spain with the respective domestic networks in those countries and will be extended by suitable facilities to the borders of other countries or to the terminals of other international communications systems participating in the TAT-9 cable system. Digital terrestrial fiber facilities will interconnect the Spain branch of TAT-9 to the proposed MAT-2[5] cable terminal on the Mediterranean coast of Spain. The MAT-2 cable system will then connect with the EMOS-1[6] cable system, thereby extending traffic from North America to the Mediterranean Region.[7] When the extensions into such territories by means of these facilities are proposed to be activated in the future, the individual carrier proposing such an extension will seek authorization from the Commission.

5. The TAT-9 Construction and Maintenance Agreement (C&MA),[8] defines the proposed cable system in terms of segments and subsegments for ownership purposes. Segments A through E, listed in Appendix 3, are the cable landing stations. Segment F is the whole of the submarine cable system provided between and among and including the system interfaces at the cable stations in the U.S., Canada, the U.K., France and Spain. Segment F consists of subsegments F1 through F6. The main, or transatlantic portion of TAT-9 is subsegment F3. Subsegment F1 is the spur to Canada. Subsegment F2 is the spur to the U.S. Subsegment F4 is the spur to the U.K. while subsegments F5 and F6 land in France and Spain, respectively. Subsegment F also includes special equipment associated with the submersible plant, the transmission cable equipped with appropriate repeaters and the terminal power feeding equipment.

6. Segment F will have 15,120 minimum assignable units of ownership (hereinafter MAUOs or 64 kilobit per second (kbit/s) circuits)[9] of usable design capacity[10] in the transatlantic portion of the cable. This cable segment bears two digital, optical fiber cable pairs with a usable design capacity on each pair of 7,560 MAUOs, provided in four 140 Mbit/s streams, with each 140 Mbit/s stream containing 1,890 MAUOs. The cable will branch into two spurs on the North American side and three spurs at a point in the Atlantic Ocean, just off of the European continental shelf. The division into these branches, or spurs, and the switching between them, will be accomplished by a Branching Unit (BU). The capacity on each

branch, or spur, is dependent on the number of working fiber pairs. The branches extending to Canada, France and Spain each have one operating fiber pair and a usable design capacity of 7,560 MAUOs. The U.K. and the U.S. subsegments each have branches containing two operating fiber pairs and a usable design capacity of 15,120 MAUOs. Since the combined capacity of the eastern and western branches exceeds the transatlantic capacity, each branch will operate at less than maximum capacity. The coastal cable stations associated with each subsegment will be located at: Manahawkin, New Jersey and Pennant Point, Nova Scotia, on the west; and Goonhilly, U.K.; St. Hilaire, France and Conil, Spain, on the east.

7. Each subsegment of Segment F will be capable of providing notional capacity intended to satisfy requirements through the year 2000.[11] If fully equipped with Digital Circuit Multiplication Systems (DCMS),[12] an estimated nominal five virtual voice paths may be derived from each MAUO for the provision of voice services. The number of equivalent voice paths shown in Appendix 4 assumes that all MAUOs in each segment of the cable are used for the provision of voice services. Since this will not be the case, the number of equivalent voice paths shown should be considered as an upper limit.

8. The estimated total costs of each subsegment of the TAT-9 cable and the estimated USISCs' share of capital, operating and maintenance costs associated with each subsegment of the cable[13] are as follows:

Subsegment	Total Cost Millions	% of Investment Costs by USISCs
F1	$ 31.9	0.00000
F2	$ 54.2	51.91865
F3	$ 175.3	45.29639
F4	$ 44.6	36.26282
F5	$ 35.0	50.17509
F6	$ 59.0	21.51158
Total Transmission Portion	$ 400.0	38.49791
Cable Stations	$ 6.4	
TOTAL	**$ 406.4**	

DCMS costs are not included because DCMS is not a part of the cable system and will be added as needed to serve future demand. The ownership shares and associated capital, operating and maintenance costs for the main cable segment (F3), are allocated to the USISCs in the same proportions as the capacity assigned to them. The combined ownership shares of the USISCs is 38.49791% with AT&T alone accounting for 28.69297% of this total ownership share. Approximately 90 percent of the costs of Segment F of the TAT-9 cable system will be on a fixed price basis while the remaining 10 percent will be on a cost-incurred basis. Items such as the submarine cable, the repeaters, the terminal transmission equipment and the high voltage power plant will be furnished on a fixed price basis. Cost-incurred items include the UBMs, the cable laying, route survey, plowing and burial of the cable, project management, Owners' inspection and amounts payable for customs duties and value added taxes.

9. The TAT-9 co-owners have agreed that AT&T, Standard Telephones and Cable (STC) of the United Kingdom and SUBMARCOM of France will each construct portions of the cable system. Although the supply contracts for TAT-9 have not been awarded, the Applicants expect that AT&T will be awarded the contract to supply subsegments F1, F2 and approximately one-half of subsegment F3.[14] The portions of the TAT-9 cable to be supplied by AT&T will use AT&T's Submarine Lightwave (SL) 560 design, incorporating two working lightguide transmission paths with associated regenerators and supervisory circuits. The cable technology selected by AT&T will employ a 1.55 micron laser wavelength in order to reduce the number of repeaters that would be required with a 1.3 micron laser wavelength. The portion of the cable being supplied by STC will use STC's NL515 design. The NL515 design incorporates one or two working lightguide pair transmission paths in the cable with associated regenerators and supervisory circuits. The SUBMARCOM contracted portion of the TAT-9 cable will utilize the S560 design, incorporating one working lightguide pair transmission path in the cable with associated regenerators and supervisory circuits.

10. The terminal transmission equipment and the high voltage power feed equipment of all three cable designs use redundant equipment with automatic protection switching. The repeaters for all three designs employ laser transmitter redundancy. The underwater branching unit will enable TAT-9 to interchange traffic groups of 45 Mbit/s and/or 140 Mbit/s between its traffic paths and will provide the mechanical, optical and electrical interfaces between the TAT-9 trunk and branches. Power feed switches will reconfigure the power in the event of a branch or trunk failure. The TAT-9 cable will be buried on the continental shelves off the coasts of Canada, the U.S., the U.K., France and Spain in order to protect it from damage due to fishing and trawler activities. The cable will also be armored and fish bite protected where required.

II. THE PLEADINGS

11. PSI, in its pleadings, requests that we condition the Section 214 authorization on the USISCs' joint compliance with the following non-structural safeguards:

> a. The U.S. TAT-9 carrier consortium should be separate from the regulated businesses of TAT-9 owners; U.S. carriers investing in TAT-9 should own an equity interest in this facility;
>
> b. The TAT-9 owners should obtain financing on their own credit or out of their own retained earnings or profits in order to help ensure that TAT-9's success or failure is borne by the owners rather than regulated ratepayers;
>
> c. U.S. carriers that obtain capacity from TAT-9 should be required to apply to the FCC for authority to do so under Section 214 of the Communications Act, in the same manner as carriers that obtain capacity from PSI;
>
> d. Any capacity obtained by AT&T in TAT-9 through the Section 214 process should be provided by the consortium on terms and conditions no more favorable than those offered to other customers, and in no event below cost.

PSI asserts that its proposal would permit construction of TAT-9 without delay and affect only the USISCs. The safeguards defined in the proposal, according to PSI, are designed to treat any activities undertaken by AT&T outside of the ratebase. PSI states that its proposed safeguards

will provide the only effective check on AT&T's ability to support its international facilities, that it may never use for ratepayer services, through its ratebase. PSI further states that requiring equity ownership of TAT-9 does not affect the carriers' costs, service quality or ability to plan with foreign correspondents.

12. PSI also submitted a petition for Rule Making stating that fair competition requires that the Commission undertake a comprehensive Rule Making to adopt regulations that will govern AT&T's participation in the market for capital conveyance of overseas circuits. PSI states that a Rule Making would permit consideration of issues concerning dominant carrier participation in an international facilities market which is not subject to intense competition. PSI states that the above mentioned conditions, in conjunction with market regulations to govern AT&T's participation in the business of conveying capital interests in overseas circuits, are necessary to ensure full realization of the benefits of competition in international telecommunications facilities and services. PSI requests that these abovementioned safeguards be adopted in the context of this current Section 214 authorization or in a separate Rule Making proceeding.

13. Cable and Wireless filed a letter with the Commission stating that while it shares the general concern that there should be equal access to the marketplace, it does not support PSI's filings as they have been submitted. Additionally, it does believe that the Commission should, and indeed will, exercise care that it does not rule in a manner which gives unfair competitive advantage to any party nor treats the PSI system in an adversely discriminatory manner.

14. Reply comments were filed by the Joint Applicants and by TRT individually. The Applicants state that PSI's proposal calling for non-structural safeguards is aimed at eradicating intramodal competition and is an attempt to gain an unfair competitive advantage without regard for the public interest. They assert that non-structural separation will deprive common carriers of both cable ownership and the ability to control the quality of their serving facilities. The Applicants maintain that, while they are not in the business of selling cable capacity, they are in the business of providing common carrier service over both cable and satellite transmission media. Construction and ownership of a cable, they assert, are incidental to that purpose. Additionally, they note that intense competition currently exists in the international services market and that this competition will constrain any carrier's ability to raise international rates or to warehouse unnecessary facilities because the carrier's revenue requirements would be too high if the ratebase were overloaded.

15. TRT maintains that PSI's conditions are patently designed to give PSI a competitive advantage and states that these conditions would create opportunities for anti-competitive mischief. TRT believes that the unique conditions proposed by PSI would result in increased costs and service delays to the detriment of the public. If additional regulatory safeguards are considered, TRT asserts that they should be considered in the context of a broad Rule Making or, as PSI proposes, in the context of a narrow Rule Making.

III. DISCUSSION

16. The issues concerning the need and timing of specific facilities chosen to be utilized in the Atlantic Ocean Region (AOR) during the 1991-2000 time period were considered by the Commission in its Report and Order in CC Docket No. 79-184. In its Report and Order, the Commission concluded that introduction of the TAT-9 cable system for service as early as 1991 will serve the public interest in meeting the North Atlantic telecommunications needs during the 1991-2000 period.[15] The Commission approved a cable configuration that will incorporate five landing points, two on the North American side and three on the European side. The facility proposed in the Application before us is consistent with the Commission's findings.

1. *Basis for TAT - 9 in 1991*

17. Although the Commission decided in the Report and Order that the TAT-9 cable introduced as early as 1991 would serve the public interest, we are required to make a determination under Section 214 of the Communications Act that the public convenience and necessity will be served by authorization of the facilities requested in the Application before us. The standard to be employed is "whether the specific facility chosen and the use to be made of that facility are required by the public convenience and necessity." *AT & T Co.*, (TAT-7), 73 FCC 2d 248, 256 (1979). In making this determination, we will consider the following aspects of the Application; (1) demand; (2) cost; (3) media and route diversity; (4) restoration; (5) digital connectivity; (6) intramodal and intermodal competition; (7) technological innovations and (8) international comity. Also, we will consider those issues raised in comments filed in response to the Application.

18. In the Third Notice of Proposed Rule Making, the USISCs and Department of Defense (DoD) submitted projected demand forecasts of digital cable facilities *(i.e.* 64 Kbit/s bearer circuits) through the year 1994. The Commission found that the projected demand for digital cable facilities demonstrated that introduction of TAT-9 in 1991 is required in order to satisfy the combined demands of the USISCs and DoD for digital 64 Kb/s cable circuits in the North Atlantic Region. These combined demands for digital circuits would essentially result in the saturation of TAT-8 by 1992.[16] It further concluded that absent TAT-9 demand flexibility would be insufficient to accommodate the demand for digital cable requirements, including wideband digital services, beyond 1991. The Commission also found that the TAT-9 digital cable will provide an important interconnection between the various developing domestic digital networks in the countries linked by TAT-9. The development of, and demand for, these digitalized services on TAT-9 could very well stimulate circuit demand beyond that projected in the traffic forecasts. Nothing in the Application or comments provides a basis for departing from these conclusions.

19. In addition, the Commission found in its Report and Order that the TAT-9 cable, which will incorporate five landing points, will enhance media and route diversity and provide restoration capability for other facilities. AT&T estimates that, with the introduction of TAT-9 in 1991, 73% to 85% of all IMTS circuits would survive a failure of the largest route to Belgium, France, Germany, Netherlands and the United Kingdom, which represents about 70% of the total IMTS circuit demand during the

planning period.[17] TAT-9 will also provide a viable restoration alternative for TAT-8 and other facilities. The need for terrestrial digital restoration for TAT-8 is even more compelling in light of DoD's substantial digital circuit requirements which were not included in the USISCs' traffic forecast.

20. The Commission also concluded that introduction of the TAT-9 cable as early as 1991 will provide digital connectivity, enhance intramodal and intermodal competition and promote international comity. The establishment of digital connectivity with the proposed MAT-2 and EMOS-1 cable systems would serve the public interest by providing direct, secure transmission channels to Mediterranean basin countries. The increase in intramodal and intermodal competition would also spur providers of both international satellite and cable services to keep their services innovative and their prices low. These technological innovations would provide users with the widest range of technological alternatives in meeting their specific service requirements.[18] The Commission also found that introduction of the TAT-9 cable as early as 1991 satisfies their objective of promoting international comity in the North Atlantic Region. The record in this proceeding does not alter the Commission findings.

21. The estimated costs of the TAT-9 cable system in the Application vary slightly from the cost information provided in the Report and Order.[19] Overall, the total construction costs for the TAT-9 cable are twenty percent greater than the total construction costs associated with the TAT-8 cable. However, the TAT-9 cable is twice the capacity of the TAT-8 cable. The capital cost per half-MAUO in the TAT-9 is currently estimated to be approximately $10,000 per half-MAUO between the U.S. and the U.K., $13,000 per half-MAUO between the U.S. and France, and $14,000 per half-MAUO between the U.S. and Spain. The capital cost of a basic digital half-MAUO in TAT-8 between the U.S. and the U.K. was $22,200. With the introduction of the TAT-9 cable system, the cost savings per half-MAUO will be approximately $12,200 for the U.S.-U.K. path. Like TAT-8, the unit costs for a virtual voice path in TAT-9 can be further reduced through the addition and use of DCMS, which will derive nominally five virtual voice paths from each MAUO.

2. ***Allocation of Capacity Among Carriers and Party Users***

22. The capacity assignments in the TAT-9 cable system are based on the forecasted demand of each of the Joint Applicants.[20] Capacity assignments between cable interfaces are indicated in the attached Appendix 6 and reflect the full allocation of the design capacity of the transatlantic portion of TAT-9.[21] Capacity pools[22] were created for each subsegment of the TAT-9 cable to accommodate parties and/or entities that may want to acquire capacity on an ownership or IRU basis.[23] Capacity in excess of projected need will be held by the terminal country carriers in proportion to total ownership.

23. The TAT-9 C&MA provides for the admission of other carriers as owners, up to the RFS date, October, 1991. According to the TAT-9 C&MA, a party may transfer its ownership interests in MAUOs to other parties or to carriers not party to the TAT-9 C&MA. After the RFS date, transfer of other than an ownership interest may take place. Both prior and subsequent to the RFS date, carriers may acquire TAT-9 capacity by IRU, lease or mutually agreed upon arrangements. In the present application, except for the transfer of an interest between the U.K. and Spain, a party may transfer ownership interests in MAUOs to another party or carrier prior to the RFS date and interests in other than an ownership basis after the RFS date. There is still some notional capacity that can be expanded to its usable design capacity between the U.K. and Spain, thereby preventing a transfer of an interest between the U.K. and Spain.

24. We conclude that the mechanism described in the TAT-9 C&MA for allocating TAT-9 capacity is consistent with Commission policy. However, we will continue to make specific provision for new United States international carriers to have access to circuits in the cable system, as we have done in authorizing other cable facilities.[24] Specifically, we adopt the approach taken by the Commission in its TAT-8 authorization[25] and authorize the construction and operation of the TAT-9 cable system on condition that the USISCs make IRU interests available to carriers who receive authority from the Commission pursuant to Section 214 to acquire such capacity. We also reserve the right to reallocate capacity in the TAT-9 cable to the extent necessary to enforce our policies regarding the accommodation of additional carriers.

3. ***Extension Facilities***

25. The Applicants each seek authority to acquire, by lease, such connecting facilities as may be required to extend the capacity in the TAT-9 cable system to points located beyond the TAT-9 landing points. Requests for authority to acquire and activate such capacity in other connecting cable systems on an IRU or ownership basis will be governed by the Commission's Rules applicable to each Applicant.

4. ***Issues Raised by PSI***

26. PSI's proposal to require the Applicants to create a consortium in order to remove the costs of the TAT-9 cable from the rate base is conceptually the same request that PSI made, and the Commission rejected, in the previous phase of the North Atlantic Facilities Planning Process in Docket No. 79-184.[26] In that proceeding, PSI argued that TAT-9 should be operated by the carriers as an enterprise structurally separate from their domestic and international communications services in order to prevent cross subsidization from domestic and international rate base customers.[27] In rejecting PSI's proposal, the Commission stated that it had never imposed structural separation requirements in connection with common carrier ownership of transmission capacity to provide basic services internationally. It further stated that any potential for anticompetitive pricing can be dealt with in the context of our current regulatory environment. We find PSI's current proposal inconsistent with the basic tenet underlying the Commission's decision not to impose structural separation requirements on common carrier ownership of transmission capacity. We further find that PSI has not provided a basis for change in the Commission's basic policy conclusions on this issue.

27. PSI does not dispute our public interest finding for the construction of TAT-9 in 1991. Rather, PSI asserts that, by removing the costs associated with the TAT-9 cable from the ratebase, fair competition will prevail in transatlantic cable facilities. However, PSI is unclear as to how its proposed conditions would ensure the successful development of facilities based competition in the North Atlantic region. PSI only asserts that the establishment of its conditions will ensure that fair competition prevails in

the international facilities arena. PSI states that it is concerned that rate base treatment of the entirety of AT&T's TAT-9 investment would permit AT&T to warehouse capacity at subsidized prices to carriers and non-carriers in a market where competition is just emerging. However, the record provides no evidence that AT&T is warehousing capacity. The Commission has already determined that user demand for digital cable capacity requires the introduction of TAT-9 as early as 1991. Additionally, PSI fails to address adequately the potential for increased costs to ratepayers associated with its proposal. In the absence of a showing from PSI that its proposal is necessary to preserve competition and will not otherwise be injurious to ratepayers, we are not compelled nor consider it appropriate at this time to require that regulations or additional constraints be imposed on the USISCs.

CONCLUSION

28. The instant Application to construct and operate the TAT-9 optical fiber cable system is consistent with the Commission's policy determinations in the Report and Order and its ultimate conclusion that the introduction of a lightguide submarine cable system in the North Atlantic region as early as 1991 would be in the public interest. The proposed system is required to satisfy the service preferences and needs of users. The TAT-9 cable system will provide service quality benefits in terms of path diversity, media diversity and restoration capability including satisfying DoD's needs for alternative routing arrangements. The proposed system also meets the international comity concerns, the needs of national security, and benefits the U.S. economy as a whole and promotes a leading role for the U.S. industry in lightwave cable system technology.

29. The grant of the requested authorizations will not constitute major actions as defined in Section 1.1305 of the Commission's Rules and Regulations implementing the National Environmental Policy Act of 1969, 42 U.S.C. Sections 4321-4347 (1976).[28] Consequently, no environmental information is required to be submitted with this Application by Section 1.1311 of the Commission's Rules.

30. Upon consideration of the Application, we find that the present and future public interest, convenience and necessity requires the construction and operation of the TAT-9 cable system as described herein.

31. Accordingly, IT IS ORDERED that the Application, File No. I-T-C-88-181, of the USISCs is GRANTED, subject to the following terms, conditions, limitations and the Applicants are authorized to:

(a) construct and operate the TAT-9 Cable System as proposed herein;

(b) acquire and activate capacity in the TAT-9 Cable System, on an ownership basis, the interests indicated in the MAUOs specified in Appendix 6;

(c) acquire capacity, by lease, in such connecting facilities as may be required to extend capacity in the TAT-9 Cable System;

(d) utilize digital circuit multiplication systems equipment to derive additional voice paths from the circuits (MAUOs) authorized herein in accordance with the appropriate Commission authorizations; and

(e) activate and operate capacity in the TAT-9 Cable System and aforementioned extension facilities for the provision of the Applicants authorized telecommunications services.

32. IT IS FURTHER ORDERED that the Applicants shall convey their interests, on an ownership or IRU basis, in the TAT-9 Cable System capacity pools for joint use by the Applicants and their correspondents, as set forth in Appendix 7, on or before the TAT-9 RFS date.

33. IT IS FURTHER ORDERED that Applicants other than AT&T are authorized to acquire, by lease, appropriate connecting facilities between the Manahawkin cable station and their respective operating offices in the United States.

34. IT IS FURTHER ORDERED that when a given Applicant seeks to acquire or transfer an ownership or IRU interest in the TAT-9 capacity, the reimbursement it receives shall be on the basis of depreciated original cost (or the pro-rated accumulated cost of such circuit if the systems are not then operational) or in conformance with such policy as the Commission shall develop in the future regarding the price at which IRUs will be made available.

35. IT IS FURTHER ORDERED that the Applicants shall make available half-interests in the TAT-9 capacity to such present and future U.S. carriers as may be authorized by the Commission to acquire such capacity.

36. IT IS FURTHER ORDERED that the Commission retains jurisdiction to reallocate U.S. carriers' interests in capacity herein authorized, as the public interest may require to accommodate additional carriers or otherwise, with, where required, the concurrence of the foreign administration or carriers concerned, and, further, jurisdiction is retained by the Commission over all matters relating to the Applicants' ownership, management, maintenance, and operation of the cable system as authorized herein, to assure the most efficient use not only of this cable system, but of all means of communications between the U.S. and North Atlantic Region.

37. IT IS FURTHER ORDERED that the Commission retains jurisdiction to review the DCMS, multiplexing, and interworking arrangements and attribution of the costs thereof and to require such changes in the provision of these services and equipment as may be necessary.

38. IT IS FURTHER ORDERED that no Applicant, which is deemed a dominant carier pursuant to the Commission's decision in CC Docket No. 85-107, herein shall dispose of any interest in any TAT-9 capacity it is authorized to acquire in any way without prior authorization by the Commission.

39. IT IS FURTHER ORDERED that the Applicants shall include TAT-9 facility use in the monthly Circuit Status Reports filed pursuant to the Commission's Orders. These reports shall be filed no later than the 20th day of each month providing the information for the preceding month.

40. IT IS FURTHER ORDERED that this authorization is issued subject to the terms and conditions of any license issued to the Applicants herein under the act entitled "An Act relating to the landing and operation of submarine cables in the United States" (47 U.S.C. Sections 34-39), covering the subject submarine cable, and shall become effective upon the acceptance of the aforementioned license by all such parties.

41. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petition for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules may be filed within 30 days of the date of public notice of this order (*See* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

APPENDIX 1

OWNERSHIP INTERESTS OF SEGMENT F OF THE TAT-9 CABLE SYSTEM

PARTIES	PERCENT
RTT (Belgium)	0.94461
TD (Denmark)	0.47800
SFPT (Finland)	0.11956
DGTF (France)	6.24738
DBP (Germany)	4.28648
OTE (Greece)	0.29757
BTE (Ireland)	0.94014
ASST (Italy)	3.66369
ITC (Italy)	2.85518
LPT (Luxemburg)	0.13384
NPTT (Netherlands)	1.26094
NTA (Norway)	0.22732
TLFN (Spain)	3.89521
STA (Sweden)	0.82753
SPTT (Switzerland)	1.88443
TPTT (Turkey)	0.59314
BT (United Kingdom)	20.88718
YPTT (Yugoslavia)	0.32078
OTC (Australia)	2.20986
TLGB (Canada)	8.59060
KDD (Japan)	0.34709
TLMX (Mexico)	0.26626
NZPO (New Zealand)	0.11964
PLDT (Philippines)	0.10584
ATT (United States)	28.69297
CICI (United States)	0.56282
FTCC (United States)	1.31203
ITT (United States)	0.74307
MCII (United States)	3.79326
TRT (United States)	1.86380
USSP (United States)	1.52996
TOTAL	100.00000

APPENDIX 3

The TAT-9 C&MA defines the Segments and Subsegments of the TAT-9 cable system as follows and indicates the following ownership thereof:

CABLE SEGMENT	LOCATION	OWNERSHIP
A	Pennant Point, Nova Scotia	TELEGLOBE (Canada)
B	Manahawkin, New Jersey	AT&T (U.S.)
C	Goonhilly, U.K.	British Telecom (U.K.)
D	St. Hilaire, France	DGTF (France)
E	Conil, Spain	Telefonica (Spain)
F	Whole of cable system between and among the cable stations at the U.S., Canada, the U.K., France and Spain.	Jointly by the TAT-9 owners as set forth in Schedule B of C&MA

APPENDIX 4

CABLE SUBSEGMENT [29]	NO. OF MAUOS	NO. OF EQUIVALENT VOICE PATHS
F1	2,250	11,250
F2	13,182	65,910
F3	15,120	75,600
F4	10,973	54,865
F5	4,101	20,505
F6	5,230	26,150

APPENDIX 7

SCHEDULE OF POOL CAPACITY (MAUOS) TO BE CONVEYED BY THE APPLICANTS

SEGMENT	F2	F3	F4	F5	F6
AT&T	1,483	1,483	660	468	54
CICI	18	18	8	0	10
ITT	5	5	0	5	0
TRT	90	90	30	30	30
USSP	30	30	0	30	0

FOOTNOTES

[1] Conference European des Administrations des Postes et des Telecommunications, an association of the state owned and operated postal and telecommunications entities in 26 European nations.

[2] The co-owners of the TAT-9 cable system and their ownership interests in the TAT-9 cable system are listed in the attached Appendix 1.

[3] North Atlantic Facilities Planning, 3 FCC Rcd 3979 (1988) (hereinafter cited as Report and Order).

[4] According to the Application, the USISCs had a total of 21,498 circuits, consisting of 10,654 submarine cable and 10,844 satellite circuits, in service to the countries and territories proposed to be served initially by TAT-9, as of December 31, 1987.

[5] MAT-2 is a proposed digital, optical fiber cable system that will link Italy and Spain. The MAT-2 will interconnect with the TAT-9 cable at Conil, Spain and extend to connect with the EMOS-1 optical, fiber cable system at Palermo, Italy. The cable is expected to be in service by October, 1991.

[6] EMOS-1 is a proposed Eastern Mediterranean optical fiber cable system extending from Italy to Greece, Turkey and Israel. The EMOS-1 cable will interconnect with the MAT-2 system at Palermo, Italy and will complete a fiber optic network that will

allow the transmission of traffic from North America and the U.K. to the Mediterranean Region. The cable is expected to be in service by July, 1990.

[7] The Joint Applicants have indicated that separate applications will be filed for authorization to acquire capacity in the MAT-2 and EMOS-1 cable systems.

[8] The TAT-9 Construction and Maintenance Agreement (hereinafter C&MA) describes the proposed cable in detail. The co-owners executed two Supplementary Agreements to the TAT-9 C&MA detailing the admission of new parties to the TAT-9 C&MA and delineating the procedure for capacity acquisition in the TAT-9 cable system. The First Supplementary Agreement was executed on December 9, 1987 and the Second Supplementary Agreement was executed on December 10, 1987.

[9] A MAUO is an equivalent voice channel operating at 64,000 bits per second with an additional 9,684.656 bits per second required for multiplexing for a total of 73,684.656 bits per second in each direction at the System Interface locations. It is the minimum practical unit of ownership in the cable.

[10] The TAT-9 C&MA defines Usable Design Capacity as "that capacity which is practically available within any subsegment having regard to the physical engineering and utilization of the TAT-9 Cable System."

[11] Notional capacity is the number of units in the cable system to which owners actually subscribe and is typically less than the design capacity of a cable. Notional capacity is a concept used to determine the unit price of capacity and to allocate costs. The unit price of capacity is determined by dividing the total cost of the appropriate submarine cable segment by the notional capacity of such segment.

[12] Digital circuit multiplication equipment was first introduced by AT&T for the TAT-8 optical fiber cable system. DCMS can derive five voice paths per MAUO. Thus, the maximum number of voice paths which the TAT-9 system could produce, if its capacity were devoted solely to voice services, would be 75,600 paths.

[13] The allocation of costs (Schedule C-1 of the Second Supplementary Agreement) associated with the TAT-9 cable as well as the assignment of capacity in the cable (Schedule E of the Second Supplementary Agreement), upon which the costs are based, are shown in the attached Appendix 5. The allocation of costs and the assignment of capacity are both broken down into subsegments F1 through F6. The cost allocation percentages in Schedule C-1 are derived from Schedule E for each subsegment according to the notes attached to Schedule C.

[14] Simplex Wire and Cable Company (Simplex) will be a major subcontractor to AT&T and will provide the lightguide submarine cable for the AT&T part of the project. It is anticipated that STC will supply the remaining portion of Subsegment F3, all of Subsegment F4 and the southern portion of Subsegment F6.

[15] Report and Order at 3983.

[16] Report & Order at 3984.

[17] According to AT&T, the percentage of IMTS traffic routed via cable will remain relatively constant for the duration of the planning period with 56% of IMTS circuits routed via cable in year 2000. Report and Order at 3986.

[18] In addition, we agree with the Applicants that the U.S. submarine cable industry will benefit from constructing a substantial portion of the cable. According to the Application, it is anticipated that AT&T will be awarded the contract to supply subsegments F1 and F2 and approximately one-half of subsegment F3.

[19] The costs of the cable stations and interest during construction are somewhat higher in the Application than what they were projected to be in the Report and Order. Cable stations in the Report and Order were estimated to be $5 million and are now estimated to be $6.4 million in the Application. The USISCs' share of interest during construction, originally estimated at $48 million is now estimated, in the Application, to be $53 million.

[20] The Applicants' circuit forecast data was included in their June 4, 1987, submission in response to the Fourth Notice of Inquiry (NOI).

[21] Each MAUO is shared jointly by a western and an eastern party for use in providing service between the two countries involved. Thus, each co-owner owns a half-interest in its respective MAUOs.

[22] A Schedule of pool capacity, in MAUOs, to be conveyed by the Applicants is attached as Appendix 7.

[23] The Pool Administrator can transfer capacity in the Subsegment Pools to other Parties or Carriers. The cost of the pool capacity is borne by the landing point parties (Pool Parties) prior to acquisition by owners or IRU purchasers. The Pool Parties' percentage of cost support of remaining pool capacity is fixed and is based on each Pool Parties' projected initial capacity requirements for use jointly between themselves and other parties not signatory to the May 11, 1986 Agreement to Plan and Implement TAT-9. The Subsegment Pools should be dissolved approximately ninety days prior to the Ready For Service (RFS) date. Otherwise, the Pool Parties shall determine by consensus the terms upon which the capacity in the Pools may be disposed of following the RFS date.

[24] American Telephone & Telegraph Co., 73 FCC 2d 248, 260 (1979) and American Telephone & Telegraph Co., 98 FCC 2d 440, 452-456 (1984).

[25] American Telephone & Telegraph Co., 98 FCC 2d 440, 455 (1984).

[26] Report and Order at 3989.

[27] PSI also recommended that the Commission replace the current "rate of return regulation" with a system designed effectively to control prices charged by AT&T for all domestic and international services. Report and Order at para. 75.

[28] *See* Report and Order, 49 FCC 2d 1313, 1320 (1974) (the laying of submarine cable and installation of additional cable over existing routes is not "major action").

[29] Subsegment F1 extends between Canada and BU1, including one-third portion of BU1. Subsegment F2 extends between the U.S. and BU1, including one-third portion of BU1. Subsegment F3 extends between BU1 and BU2, including a one-third portion of BU1 and a one-fourth portion of BU2. Subsegment F4 extends between the U.K. and BU2, including a one-fourth portion of BU2. Subsegment F5 extends between France and BU2, including a one-fourth portion of BU2. Subsegment F6 extends between Spain and BU2, including a one-fourth portion of BU2. The cable subsegments are owned jointly by the TAT-9 owners as set forth in Appendix 5.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY
CICI, INC.
FTC COMMUNICATIONS, INC.
MCI INTERNATIONAL, INC.
TRT TELECOMMUNICATIONS CORPORATION
US SPRINT COMMUNICATIONS COMPANY
WU WORLD COMMUNICATIONS, INC.

File No. I-T-C-88-181

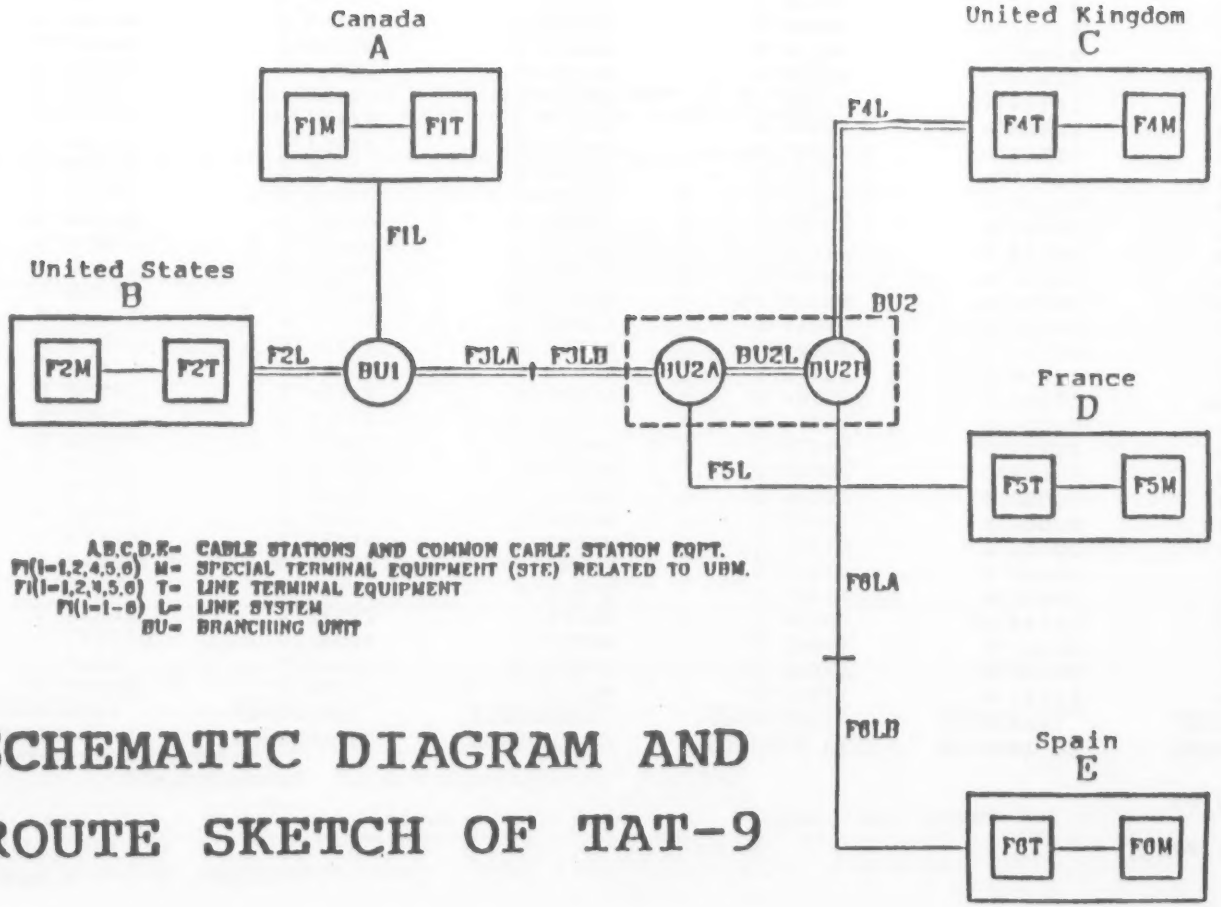
Joint Application for Authorization Under Section 214 of the Communications Act of 1934, as Amended, to Construct, Assign Capacity in and Operate a High Capacity, Digital Submarine Cable System Between and Among the United States, Canada, the United Kingdom, France and Spain.

ERRATUM

Released: January 6, 1989

On December 27, 1988, the Commission's Common Carrier Bureau released a Memorandum Opinion, Order and Authorization, (DA 88-1962) in the above captioned proceeding. This document corrects the captioned proceeding by attaching Appendix 2, Appendix 5 and Appendix 6.

FEDERAL COMMUNICATIONS COMMISSION



SCHEMATIC DIAGRAM AND ROUTE SKETCH OF TAT-9

PARTIES	SUBSGMT F1 (PERCENT)	SUBSGMT F2 (PERCENT)	SUBSGMT F3 (PERCENT)	SUBSGMT F4 (PERCENT)	SUBSGMT F5 (PERCENT)	SUBSGMT F6 (PERCENT)
RTT	0.88889	1.08102	1.07474	1.34421	0.73153	0.28681
TD	0.40000	0.51585	0.50926	0.87943	0.00000	0.37285
SFPT	0.13333	0.14034	0.14220	0.20961	0.00000	0.02868
DGTF	3.18530	6.84683	6.43104	0.00000	25.64459	0.00000
DBP	2.66667	5.23441	4.96032	3.34913	9.32699	0.00000
OTE	0.66667	0.11379	0.19841	0.13670	0.00000	0.86042
BTE	0.53333	1.11136	1.04828	1.74519	0.00000	0.63098
ASST	0.00000	0.00000	0.00000	3.28078	0.00000	22.37093
ITC	3.06667	2.20756	2.38095	0.00000	0.00000	8.60421
LPT	0.22222	0.11379	0.13228	0.00000	0.48769	0.00000
NPTT	0.88889	1.56653	1.49802	1.92746	0.73153	0.28681
NTA	0.26667	0.26551	0.27116	0.39643	0.00000	0.04780
TLFN	0.66667	2.36471	2.16212	3.78316	0.00000	14.60006
STA	0.53333	0.91792	0.87963	1.54470	0.00000	0.69790
SPTT	1.06667	2.34411	2.20238	1.58571	3.87710	0.00000
TPTT	0.40000	0.37931	0.39021	0.41010	0.00000	1.98853
BT	24.00410	20.44697	20.82135	36.12758	0.00000	20.68871
YPTT	0.66667	0.22758	0.29762	0.00000	0.73153	0.28681
OTC	8.66667	1.04688	2.20238	2.54716	0.81687	0.38241
TLGB	51.07725	0.00000	6.09267	3.62229	6.68460	5.83826
KDD	0.00000	0.49310	0.42989	0.41010	0.36576	0.09560
TLMX	0.00000	0.34137	0.29762	0.13670	0.36576	0.28681
NZPO	0.00000	0.17827	0.15542	0.19138	0.03658	0.01912
PLDT	0.00000	0.14414	0.12566	0.10936	0.02438	0.11472
ATT	0.00000	37.88057	33.05764	23.90065	41.88443	18.56703
CICI	0.00000	0.79654	0.69444	0.68350	0.36576	0.28681
FTCC	0.00000	1.91928	1.67328	1.81354	1.28018	0.02868
ITT	0.00000	1.04309	0.90939	0.82020	0.79249	0.28681
MCII	0.00000	5.38234	4.69246	4.55208	3.29188	1.43403
TRT	0.00000	2.73479	2.38426	2.71576	1.09729	0.33461
USSP	0.00000	2.16204	1.88492	1.77709	1.46306	0.57361
TOTAL	100.00000	100.00000	100.00000	100.00000	100.00000	100.00000
relative costs of the subsegments of Segment F:	7.96813	13.54582	43.82469	11.15538	8.76494	14.74104

SCHEDULE E-1
10 December 1987

ASSIGNMENT OF CAPACITY IN SUBSEGMENT F1 IN HALF INTERESTS IN 73,684.656 BITS PER SECOND CHANNELS

PARTIES	RTT	TO	SFPT	DGTF	DMP	OIE	BIE	ITC	LPT	MPTT	NTA	TLFR	STA	SPTT	TPTT	BT	YPTT	OTC	TLCD	ADMN #	OTNE *	OTNJ *	TOTAL
RTT	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	40	-	-	-	40
TO	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	18	-	-	-	18
SFPT	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	6	-	-	-	6
DGTF	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	110	-	-	25	135
DMP	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	120	-	-	-	120
OIE	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30	-	-	-	30
BIE	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	24	-	-	-	24
ITC	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	130	-	-	-	130
LPT	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	10	-	-	-	10
MPTT	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	40	-	-	-	40
NTA	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	12	-	-	-	12
TLFR	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30	-	-	-	30
STA	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	24	-	-	-	24
SPTT	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	48	-	-	-	48
TPTT	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	18	-	-	-	18
BT	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	390	390	-	-	-	780
YPTT	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30	-	-	-	30
OTC	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	390	-	-	-	-	-	-	390
TLCD	40	18	6	110	120	30	24	130	10	40	12	30	24	48	18	390	30	-	-	-	435	-	1,523
ADMN #	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0
OTNE *	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	435	-	-	312	747
OTNJ *	-	-	-	25	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	312	-	337
TOTAL	40	18	6	135	120	30	24	130	10	40	12	30	24	48	18	780	30	390	1523	0	747	337	4,500

POOL CAPACITY PROPORTIONS PERCENT(Note 2)

ATT	0.00000%	BT	27.69231%	DGTF	0.76923%	TLFR	0.00000%	TLCD	71.53846%	TOTAL	100.00000%

* - Note 1 # - Note 3

ASSIGNMENT OF CAPACITY IN SUBSEGMENT F2 IN HALF INTERESTS IN 73,684.656 BITS PER SECOND CHANNELS

PARTIES		RIT	TD	SFPT	DGTF	DDP	OIE	DIE	IIC	LPT	MPTT	NTA	TLFN	STA	SPTT	TPTT	BT	YPTT	OTC	KDD	TLME	NZPO	PLDT	AIT	CICI	FICC	ITT	MCII	TRT	USSP	ADMN	OTME	OTMV	TOTAL
																														@	*	*	
RIT		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	16	-	-	-	-	180	7	4	30	30	7	-	-	-	11	295
TD		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	11	-	-	1	-	90	-	-	-	32	2	-	-	-	-	136
SFPT		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5	-	-	-	-	30	-	-	-	-	2	-	-	-	-	37
DGTF		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	25	30	20	2	-	1020	30	90	30	240	30	90	-	-	-	1,615
DDP		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	61	-	15	2	7	1000	20	15	30	60	90	-	-	-	-	1,380
OIE		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30	-	-	-	-	-	30
DIE		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	17	6	-	2	-	180	2	-	-	30	-	30	-	-	28	293
IIC		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30	-	-	-	-	462	-	-	-	60	-	30	-	-	-	582
LPT		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30	-	-	-	-	-	-	-	-	-	30
MPTT		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	35	-	-	4	-	210	10	4	30	60	10	30	-	-	20	413
NTA		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	6	-	-	-	-	60	1	-	-	1	2	-	-	-	-	70
TLFN		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	10	10	30	2	5	255	20	3	30	60	5	30	-	-	102	562
STA		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	18	-	-	1	-	120	2	-	-	60	3	30	-	-	2	242
SPTT		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	19	-	5	2	-	390	10	-	30	120	30	-	-	-	12	618
TPTT		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	100	-	-	-	-	-	-	-	-	-	100
BT		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	86	10	30	12	2700	90	390	90	630	450	300	-	-	275	5,063
YPTT		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	60	-	-	-	-	-	-	-	-	-	60
OTC		16	11	5	25	61	-	17	30	-	35	6	10	18	19	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	23	-	276
KDD		-	-	-	30	-	-	6	-	-	-	-	10	-	-	-	86	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	130
TLME		-	-	-	20	15	-	-	-	-	-	-	30	-	5	-	10	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	90
NZPO		-	1	-	2	2	-	2	-	-	6	-	2	1	2	-	30	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	47
PLDT		-	-	-	-	7	-	-	-	-	-	-	5	-	-	-	12	-	-	-	-	-	-	-	-	-	-	-	-	-	-	16	-	50
AIT		180	90	30	1020	1000	-	180	462	30	210	60	255	120	390	100	2700	60	-	-	-	-	-	-	-	-	-	-	-	-	-	1483	-	8,450
CICI		7	-	-	30	20	-	2	-	-	10	1	20	2	10	-	90	-	-	-	-	-	-	-	-	-	-	-	-	-	-	18	-	210
FICC		4	-	-	90	15	-	-	-	-	4	-	3	-	-	-	390	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	506
ITT		30	-	-	30	30	-	-	-	-	30	-	30	-	30	-	90	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5	-	275
MCII		30	32	-	240	60	30	30	60	-	60	1	60	66	120	-	630	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,419
TRT		7	2	2	30	90	-	-	-	-	10	2	5	3	30	-	450	-	-	-	-	-	-	-	-	-	-	-	-	-	-	90	-	721
USSP		-	-	-	90	-	-	30	30	-	30	-	30	30	-	-	300	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30	-	570
ADMN	@	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0
OTME	*	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	23	-	2	1	16	1483	18	-	5	-	90	30	-	-	-	1,666
OTMV	*	11	-	-	-	-	-	28	-	-	20	-	102	2	12	-	275	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	450
TOTAL		295	156	37	1615	1380	50	293	582	30	413	70	562	242	618	100	5063	60	276	130	90	47	38	8650	210	506	275	1419	721	570	0	1666	450	26,364

POOL CAPACITY PROPORTIONS
PERCENT(Note 2)

AIT	72.62905%	BT	15.48587%	DGTF	0.98387%	TLFN	2.90323%	TLGB	0.00000%	TOTAL	100.00000%
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* - Note 1 @ - Note 3

SCHEDULE E-3
10 December 1987

ASSIGNMENT OF CAPACITY IN SUBSEGMENT F3 IN HALF INTERESTS IN 73,684.656 BITS PER SECOND CHANNELS

PARTIES	RTT	ID	SFPT	DGTF	DBP	OTE	BTE	ITC	LPT	MPTT	NTA	TLFB	STA	SPTT	TPTT	BT	YPTT	OTC	TLGB	KDD	TLHK	NZPO	PLOT	ATT	CICI	FTCC	ITT	MCII	TBT	USSP	ADMN #	OTHE *	OTHU *	TOTAL
RTT	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	16	48	-	-	-	-	180	7	4	30	30	7	-	-	-	11	325
ID	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	11	18	-	-	1	-	90	-	-	-	32	2	-	-	-	-	154
SFPT	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5	6	-	-	-	-	30	-	-	-	-	2	-	-	-	-	43
DGTF	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	25	110	30	20	2	-	1020	30	90	30	240	30	90	-	-	25	1,750
DBP	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	61	120	-	15	2	7	1080	20	15	30	60	90	-	-	-	-	1,500
OTE	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30	-	-	-	-	-	-	-	-	30	-	-	-	-	-	60
BTE	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	17	24	4	-	2	-	180	2	-	-	30	-	30	-	-	20	317
ITC	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30	138	-	-	-	-	462	-	-	-	60	-	30	-	-	-	720
LPT	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	10	-	-	-	-	30	-	-	-	-	-	-	-	-	-	40
MPTT	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	35	48	-	-	6	-	210	10	4	30	60	10	30	-	-	20	453
NTA	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	6	12	-	-	-	-	60	1	-	-	1	2	-	-	-	-	82
TLFB	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	10	30	10	30	2	5	255	20	3	30	60	5	30	-	-	102	592
STA	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	10	24	-	-	1	-	120	2	-	-	66	3	30	-	-	2	266
SPTT	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	19	48	-	5	2	-	390	10	-	30	120	30	-	-	-	12	666
TPTT	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	18	-	-	-	-	100	-	-	-	-	-	-	-	-	-	118
BT	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	390	390	86	10	30	12	2700	90	390	90	650	450	300	-	-	275	5,843
YPTT	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30	-	-	-	-	60	-	-	-	-	-	-	-	-	-	90
OTC	16	11	5	25	61	-	17	30	-	35	6	10	18	19	-	390	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	23	666
TLGB	48	18	6	110	120	30	24	138	10	48	12	30	24	48	18	390	30	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	435	1,523
KDD	-	-	-	30	-	-	6	-	-	-	-	10	-	-	-	86	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	150
TLHK	-	-	-	20	15	-	-	-	-	-	-	30	-	5	-	10	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	90
NZPO	-	1	-	2	2	-	2	-	-	6	-	2	1	2	-	30	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	47
PLOT	-	-	-	-	7	-	-	-	-	-	-	5	-	-	-	12	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	14	38
ATT	180	90	30	1020	1080	-	100	462	30	210	60	255	120	390	100	2700	60	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1483	8,450
CICI	7	-	-	30	20	-	2	-	-	10	1	20	2	10	-	90	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	18	210
FTCC	6	-	-	90	15	-	-	-	-	6	-	5	-	-	-	390	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	506
ITT	30	-	-	30	30	-	-	-	-	30	-	30	-	30	-	90	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5	275
MCII	30	32	-	240	60	30	30	60	-	60	1	60	66	120	-	650	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,419
TBT	7	2	2	30	90	-	-	-	-	10	2	5	3	30	-	450	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	90	721
USSP	-	-	-	90	-	-	30	30	-	30	-	30	30	-	-	300	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30	570
ADMN #	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0
OTHE *	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	23	435	-	2	1	16	1483	18	-	15	-	90	30	-	-	-	2,101
OTHU *	11	-	-	25	-	-	20	-	-	20	-	102	2	12	-	275	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	475
TOTAL	325	154	43	1750	1500	60	317	720	40	453	82	592	266	666	110	5843	90	666	1523	130	90	47	38	8450	210	506	275	1419	721	570	0	2101	475	30,240

POOL CAPACITY PROPORTIONS PERCENT(Note 2)

ATT	60.04000%	BT	17.60000%	DGTF	7.56000%	TLFB	2.40000%	TLGB	12.40000%	TOTAL	100.00000%

* - Note 1 # - Note 3

SCHEDULE E-4
10 December 1987

ASSIGNMENT OF CAPACITY IN SUBSEGMENT F4 IN HALF INTERESTS IN 73,684.656 BITS PER SECOND CHANNELS

PARTIES		ATT	TD	SFPT	DDP	OIE	BIE	ASST	MPTT	BTA	TLFN	STA	SPTT	TPTT	BT	OIC	TLGB	KDD	TLHK	HZPO	PLDT	ATT	CICI	FTCC	ITT	MCIT	TRT	USSP	ADMN	OTHE	OTHU	TOTAL
																													#	*	*	
ATT		-	-	-	-	-	-	-	-	-	30	-	-	-	-	16	48	-	-	-	-	120	7	6	30	30	7	-	-	-	11	295
TD		-	-	-	-	-	-	30	-	-	9	-	-	-	-	11	18	-	-	1	-	90	-	6	-	32	2	-	-	-	-	193
SFPT		-	-	-	-	-	-	-	-	-	3	-	-	-	-	5	6	-	-	-	-	30	-	-	-	-	2	-	-	-	-	46
DDP		-	-	-	-	-	-	-	-	-	-	-	-	-	-	31	60	-	15	2	7	450	20	-	30	60	60	-	-	-	-	735
OIE		-	-	-	-	-	-	-	-	-	-	-	-	-	30	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30
BIE		-	-	-	-	-	-	30	-	-	30	-	-	-	-	17	24	6	-	2	-	180	2	-	-	30	-	30	-	6	28	383
ASST		-	30	-	-	-	30	-	-	-	-	60	-	-	600	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	720
MPTT		-	-	-	-	-	-	-	-	-	30	-	-	-	-	35	48	-	-	6	-	150	10	6	30	60	10	30	-	20	-	423
BTA		-	-	-	-	-	-	-	-	-	3	-	-	-	-	6	12	-	-	-	-	60	1	-	-	1	2	-	-	-	-	87
TLFN		30	9	3	-	-	30	-	30	3	-	15	-	-	690	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	810
STA		-	-	-	-	-	-	60	-	-	15	-	-	-	-	18	24	-	-	1	-	120	2	-	-	66	3	30	-	-	2	339
SPTT		-	-	-	-	-	-	-	-	-	-	-	-	-	-	19	-	-	5	2	-	180	10	-	-	90	30	-	-	-	-	348
TPTT		-	-	-	-	-	-	-	-	-	-	-	-	-	90	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	90
BT		-	-	-	-	30	-	600	-	-	690	-	-	90	-	390	390	86	10	30	12	2700	90	390	90	630	450	300	-	60	275	7,315
OIC		16	11	5	31	-	17	-	35	6	-	18	19	-	390	-	-	-	-	-	-	-	-	-	-	-	-	-	-	11	-	559
TLGB		48	18	6	60	-	24	-	48	12	-	24	12	-	390	-	-	-	-	-	-	-	-	-	-	-	-	-	-	97	-	723
KDD		-	-	-	-	-	6	-	-	-	-	-	-	-	84	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	90
TLHK		-	-	-	15	-	-	-	-	-	-	-	5	-	10	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30
HZPO		-	1	-	2	-	2	-	4	-	-	1	2	-	30	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	42
PLDT		-	-	-	7	-	-	-	-	-	-	-	-	-	12	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5	-	24
ATT		120	90	30	450	-	180	-	150	60	-	120	180	-	2700	-	-	-	-	-	-	-	-	-	-	-	-	-	-	660	-	4,740
CICI		7	-	-	20	-	2	-	10	1	-	2	10	-	90	-	-	-	-	-	-	-	-	-	-	-	-	-	-	8	-	150
FTCC		6	-	-	-	-	-	-	6	-	-	-	-	-	390	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	398
ITT		30	-	-	30	-	-	-	30	-	-	-	-	-	90	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	180
MCIT		30	32	-	60	-	30	-	60	1	-	66	90	-	630	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	999
TRT		7	2	2	60	-	-	-	10	2	-	3	30	-	450	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30	-	596
USSP		-	-	-	-	-	30	-	30	-	-	30	-	-	300	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	390
ADMN	#	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0
OTHE	*	-	-	-	-	-	6	-	-	-	-	-	-	-	60	11	97	-	-	-	5	660	8	-	-	-	30	-	-	-	-	877
OTHU	*	11	-	-	-	-	28	-	20	-	-	2	-	-	275	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	336
TOTAL		295	193	46	735	30	383	720	423	87	810	339	348	90	7315	559	723	90	30	42	24	4740	150	398	180	999	596	390	0	877	336	21,946

POOL CAPACITY PROPORTIONS

	PERCENT(Note 2)							
ATT	41.65202%	BT	50.74692%	DGTF	0.00000%	TLFN	1.66960%	TLGB	5.93166%	TOTAL	100.00000%

* - Note 1 # - Note 3

SCHEDULE E-5
10 December 1987

ASSIGNMENT OF CAPACITY IN SUBSEGMENT F5 IN HALF INTERESTS IN 73,684.656 BITS PER SECOND CHANNELS

PARTIES	RTT	DGTF	DDP	LPT	NPTT	PPTT	YPTT	OTC	TLGB	KBD	TLMK	NZPO	PLDT	ATT	CICI	FTCC	ITT	MCII	TRT	USSP	ADMN #	OTNE *	OTNW *	TOTAL
RTT	-	-	-	-	-	-	-	-	-		-	-	-	60	-	-	-	-	-	-	-	-	-	60
DGTF	-	-	-	-	-	-	-	25	110	30	20	2	-	1020	30	90	30	240	30	90	-	-	25	1,750
DDP	-	-	-	-	-	-	-	30	60	-	-	-	-	630	-	15	-	-	30	-	-	-	-	765
LPT	-	-	-	-	-	-	-	-	10	-	-	-	-	30	-	-	-	-	-	-	-	-	-	40
NPTT	-	-	-	-	-	-	-	-	-	-	-	-	-	60	-	-	-	-	-	-	-	-	-	60
SPTT	-	-	-	-	-	-	-	-	36	-	-	-	-	210	-	-	30	30	-	-	-	-	12	318
YPTT	-	-	-	-	-	-	-	-	30	-	-	-	-	30	-	-	-	-	-	-	-	-	-	60
OTC	-	25	30	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	12	-	67
TLGB	-	110	60	10	-	36	30	-	-	-	-	-	-	-	-	-	-	-	-	-	-	134	-	380
KBD	-	30	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30
TLMK	-	20	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	30
NZPO	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	3
PLDT	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	2
ATT	60	1020	630	30	60	210	30	-	-	-	-	-	-	-	-	-	-	-	-	-	-	468	-	2,508
CICI	-	30	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30
FTCC	-	90	15	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	105
ITT	-	30	-	-	-	30	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5	-	65
MCII	-	240	-	-	-	30	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	270
TRT	-	30	30	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30	-	90
USSP	-	90	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30	-	120
ADMN #	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0
OTNE *	-	-	-	-	-	-	-	12	134	-	2	1	2	468	-	-	5	-	30	30	-	-	364	1,048
OTNW *	-	25	-	-	-	12	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	364	-	401
TOTAL	60	1750	765	40	60	318	60	67	380	30	30	3	2	2508	30	105	65	270	90	120	0	1048	401	8,202

POOL CAPACITY PROPORTIONS
PERCENT(Note 2)

ATT	64.[illegible]%	RT	0.00000%	DGTF	24.38710%	TLFN	0.00000%	TLGB	11.61290%	TOTAL	100.00000%

* - Note 1 # - Note 3

SCHEDULE E-6
10 December 1987

ASSIGNMENT OF CAPACITY IN SUBSEGMENT F6 IN HALF INTERESTS IN 73,684.656 BITS PER SECOND CHANNELS

PARTIES	BIT	TD	SFPT	OTE	BTE	ASST	ITC	MPTT	NTA	TLFN	STA	TPTT	BT	YPTT	OTC	TLCB	KDD	TLMK	NZPO	PLDT	ATT	CICI	FICC	ITT	MCII	TRT	USSP	ADMN #	OTNE *	OTNU *	TOTAL
BIT	-	-	-	-	-	-	-	-	-	30	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30
TD	-	-	-	-	-	30	-	-	-	9	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	39
SFPT	-	-	-	-	-	-	-	-	-	3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3
OTE	-	-	-	-	-	-	-	-	-	-	-	-	30	-	-	30	-	-	-	-	-	-	-	-	30	-	-	-	-	-	90
BTE	-	-	-	-	-	30	-	-	-	30	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	6	-	66
ASST	-	30	-	-	30	1620	-	-	-	-	60	-	600	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2,340
ITC	-	-	-	-	-	-	180	-	-	-	-	-	-	-	30	138	-	-	-	-	462	-	-	-	60	-	30	-	-	-	900
MPTT	-	-	-	-	-	-	-	-	-	30	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30
NTA	-	-	-	-	-	-	-	-	-	5	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5
TLFN	30	9	3	-	30	-	-	30	5	-	15	-	690	-	10	30	10	30	2	5	255	20	3	30	60	5	30	-	-	102	1,402
STA	-	-	-	-	-	60	-	-	-	15	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	75
TPTT	-	-	-	-	-	-	-	-	-	-	-	-	90	-	-	18	-	-	-	-	100	-	-	-	-	-	-	-	-	-	208
BT	-	-	-	30	-	600	-	-	-	690	-	90	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	270	-	1,680
YPTT	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30	-	-	-	-	-	-	-	-	-	30
OTC	-	-	-	-	-	-	30	-	-	10	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	40
TLCB	-	-	-	30	-	-	138	-	-	30	-	18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	204	-	420
KDD	-	-	-	-	-	-	-	-	-	10	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	10
TLMK	-	-	-	-	-	-	-	-	-	30	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30
NZPO	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2
PLDT	-	-	-	-	-	-	-	-	-	5	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	7	-	12
ATT	-	-	-	-	-	-	462	-	-	255	-	100	-	30	-	-	-	-	-	-	-	-	-	-	-	-	-	-	548	-	1,395
CICI	-	-	-	-	-	-	-	-	-	20	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	10	-	30
FICC	-	-	-	-	-	-	-	-	-	3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3
ITT	-	-	-	-	-	-	-	-	-	30	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30
MCII	-	-	-	30	-	-	60	-	-	60	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	150
TRT	-	-	-	-	-	-	-	-	-	5	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30	-	35
USSP	-	-	-	-	-	-	30	-	-	30	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	60
ADMN #	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0
OTNE *	-	-	-	-	6	-	-	-	-	-	-	-	270	-	-	204	-	-	-	7	548	10	-	-	-	30	-	-	-	85	1,160
OTNU *	-	-	-	-	-	-	-	-	-	102	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	85	-	187
TOTAL	30	39	3	90	66	2340	900	30	5	1402	75	208	1680	30	40	420	10	30	2	12	1395	30	3	30	150	35	60	0	1160	187	10,660

POOL CAPACITY PROPORTIONS

	PERCENT(Note 2)							
ATT	40.61706%	BT	35.93466%	OGTF	0.00000%	TLFN	9.29220%	TLCB	14.15608%	TOTAL	100.00000%

* - Note 1 # - Note 3

SCHEDULE D-4
10 December 1987

ASSIGNMENT OF MAUOS IN THE TAT-9 CABLE SYSTEM

MAUOS ASSIGNED FOR JOINT USE
BETWEEN THE UNITED STATES AND THE
UNITED KINGDOM SYSTEM INTERFACES

PARTIES	OTC	KDD	TLMX	NZPO	PLDT	ATT	CICI	FTCC	ITT	MCII	TRT	USSP	OTHW	TOTAL
RTT	16					120	7	4	30	30	7		11	225
TD	11			1		90				32	2			136
SFPT	5					30					2			37
DBP	31		15	2	7	450	20		30	60	60			675
BTE	17	4		2		180	2			30		30	28	293
NPTT	35			4		150	10	4	30	60	10	30	20	353
NTA	6					60	1			1	2			70
STA	18			1		120	2			66	3	30	2	242
SPTT	19		5	2		180	10			90	30			336
BT		86	10	30	12	2,700	90	390	90	630	450	300	275	5,063
OTHE	11				5	660	8				30			714
TOTAL	169	90	30	42	24	4,740	150	398	180	999	596	390	336	8,144

1145

APPENDIX 6

D-4

SCHEDULE D-9
10 December 1987

ASSIGNMENT OF MAUOS IN THE TAT-9 CABLE SYSTEM

MAUOS ASSIGNED FOR JOINT USE
BETWEEN THE UNITED STATES AND THE
FRANCE SYSTEM INTERFACES

PARTIES	OTC	KDD	TLMX	NZPO	PLDT	ATT	CICI	FTCC	ITT	MCII	TRT	USSP	OTHW	TOTAL
RTT						60								60
DGTF	25	30	28	2		1,020	30	90	30	240	30	90		1,615
DBP	30					630		15			30			705
LPT						30								30
NPTT						60								60
SPTT						210			30	30			12	282
YPTT						30								30
OTHE	12		2	1	2	275			5		30	30		357
TOTAL	67	30	30	3	2	2,315	30	105	65	270	90	120	12	3,139

1146

APPENDIX 6

SCHEDULE
10 December

ASSIGNMENT OF MAUOS IN THE TAT-9 CABLE SYSTEM

MAUOS ASSIGNED FOR JOINT USE BETWEEN THE UNITED STATES AND THE SPAIN SYSTEM INTERFACES

PARTIES	OTC	KDD	TLMX	NZPO	PLDT	ATT	CICI	FTCC	ITT	MCII	TRT	USSP	OTHW	TOT...
OTE										30				30
ITC	30					462				60		30		582
TLFN	10	10	30	2	5	255	20	3	30	60	5	30	102	562
TPTT						100								100
YPTT						30								30
OTHE					7	548	10				30			595
TOTAL	40	10	30	2	12	1,395	30	3	30	150	35	60	102	1,899

1147

APPENDIX 6

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

The Prescription of Revised Percentages of Depreciation pursuant to the Communications Act of 1934, as amended for:

CINCINNATI BELL TELEPHONE COMPANY
CITIZENS UTILITIES COMPANY
OF CALIFORNIA
CONTEL OF CALIFORNIA
CONTEL OF NEW YORK,
INCORPORATED
THE DIAMOND STATE TELEPHONE COMPANY
GTE FLORIDA INCORPORATED
GTE HAWAIIAN TELEPHONE COMPANY
INCORPORATED
GTE NORTH INCORPORATED
GTE NORTHWEST INCORPORATED
ILLINOIS BELL TELEPHONE COMPANY
MOUNTAIN STATES TELEPHONE AND
TELEGRAPH COMPANY
NEVADA BELL
NEW JERSEY BELL TELEPHONE COMPANY
PACIFIC BELL
PACIFIC NORTHWEST BELL TELEPHONE
COMPANY

ORDER

Adopted: December 29, 1988; Released: January 25, 1989

By the Commission: Commissioner Dennis dissenting in part and issuing a statement at a later date.

I. INTRODUCTION

1. In this Order, we prescribe depreciation rates and amortizations for fifteen domestic carriers that filed requests in 1988 for changes in their annual depreciation rates expenses.[1] We developed the prescribed depreciation rates and amortizations listed in the Appendix after considering the studies underlying the carriers' requests and the comments of the interested parties.

II. BACKGROUND

2. Depreciation is the loss of service value incurred in connection with the use and prospective retirement of telecommunications plant from known causes, the effect of which can be forecast with reasonable accuracy.[2] Depreciation accounting is the mechanism through which the loss in service value is distributed to operating expense during the service life of the plant. This Commission is authorized to prescribe depreciation rates to compute the allowable depreciation expense for telephone common carriers as part of our responsibilities under the Communications Act of 1934. [3]

3. Depreciation is an important factor in the determination of a carrier's revenue requirement. It has two primary effects. First, the depreciation expense is included directly as a part of a carrier's revenue requirement. Second, the accumulation of the depreciation expense, which is commonly described as the depreciation reserve, is a deduction from the rate base and therefore affects the return component of a carrier's revenue requirement.

III. REVIEW PROCEDURES

4. It is our practice to review and revise, as necessary, depreciation rates and amortizations for approximately one third of the larger local exchange carriers (LECs) each year. This year, in accordance with this triennial schedule, the LECs listed in the caption submitted studies proposing new depreciation rates and amortizations based upon revised estimates of the primary depreciation factors (i.e., equipment service life, net salvage and mortality dispersion patterns).

5. The Common Carrier Bureau (Bureau) thoroughly reviewed the carriers' studies and proposals and prepared its own preliminary analysis. Pursuant to Section 220(i) of the Communications Act, 47 USC § 220(i), the Bureau transmitted these analyses by letter to the relevant state commissions. The Bureau then conducted meetings and telephone conversations with representatives of the state commissions and carriers to obtain information regarding depreciation factors for determination of the depreciation rates, amortizations, and expense levels. After these discussions the Bureau reevaluated its preliminary recommendations, and, in many cases, revised them to reflect additional facts raised by the carriers and state commissions. Finally, the carriers formally filed with this Commission proposals for the prescription of revised depreciation rates and amortizations.

6. The Bureau described the annual depreciation expense impact of its proposed rates and amortizations in a Public Notice dated August 26, 1988 which invited interested persons to file comments.[4] The Bureau transmitted to each carrier and respective state commission a copy of the Public Notice and a list of the depreciation factors used to calculate its recommended depreciation rates and amortizations. The Florida Public Service Commission (Florida PSC), GTE Florida, and GTE North filed comments. The staff of the Missouri Public Service Commission (Missouri staff) filed a reply.

IV. DISCUSSION

7. For the vast majority of the accounts under review, the carriers filed proposed depreciation rates and amortizations consistent with the Bureau's recommendations, and no party filed opposing comments.[5] Based upon the record supporting these rates and amortizations, and in view of the fact that we have received no opposition to their use, we prescribe these rates for the affected carriers.

8. For the remainder of the rates (21 rates for GTE North-Missouri and one rate for GTE Florida), either the carriers filed for rates inconsistent with those proposed by the Bureau's Public Notice or parties filed comments objecting to them. In addition, GTE North has proposed

the use of amortization procedures to eliminate a reserve deficiency for Missouri.[6] We discuss below our findings concerning these matters.

A. *GTE North - Missouri Objections*

9. GTE North requests certain depreciation rates different from the rates proposed by the Bureau for 20 of the 24 rates proposed for Missouri. In its comments, however, GTE North has not provided any support to demonstrate why the rates proposed by the Bureau are incorrect or why its proposed rates would be more accurate. Because the Bureau's rates are supported by a study of the applicable service lives and salvage values, and since GTE North has provided no other basis for adopting alternative rates, we adopt the rates proposed by the Bureau.

B. *GTE North - Missouri Amortization*

10. Our studies show that GTE North-Missouri has a reserve deficiency of five percent of its plant investment based upon the depreciation factors which underlie the Bureau's recommendations.[7] This exceeds the average industry reserve deficiency of four percent.[8] GTE North proposes to eliminate its depreciation reserve deficiency in Missouri by the use of amortization procedures instead of remaining-life depreciation procedures. The Missouri staff opposes such treatment, claiming that the remaining-life methodology already in place will be adequate for GTE North's needs. Considering GTE North-Missouri's reserve situation, however, we see no valid basis for departing from our policy established in the *Amortization Order* nor have the parties identified one.[9]

11. Although we have concluded that GTE North's reserve deficiency in Missouri should be eliminated through amortization, we do not agree with its proposed amortization period. GTE North proposes a three-year amortization period but provides no justification for its proposal. In the *Amortization Order*, we concluded that a five-year amortization period produces an appropriate balance between the speed of recovery of the deficiency and impact on ratepayers.[10] As a result, we ordered a five-year amortization of the reserve imbalances of the LECs. For the reasons identified in the *Amortization Order*, we conclude that the use of a five-year amortization schedule[11] is appropriate for GTE North's reserve deficiency in Missouri. Use of a five-year period will provide a timely resolution of the deficiency for the carrier without causing an inordinate burden on the ratepayers in any one year.

C. *GTE North - Missouri - Electromechanical Switching Equipment*

12. GTE North proposes an increase in the depreciation rate for its Electromechanical Switching Equipment Account in Missouri, based upon its current switch replacement schedule which significantly reduces the estimated life of its electromechanical switches. The Missouri staff, however, proposes that the existing rate be maintained. The Missouri staff questions the economic benefit of many of the electromechanical switch replacements made to date as well as those scheduled for retirement in the next few years.

13. We cannot agree with the Missouri staff's proposal for this account because it is inconsistent with GTE North's electromechanical switching equipment retirement plans, and we believe that GTE North has adequately demonstrated its ability and intent to carry out such plans as well as the reasonableness of its schedule. The depreciation rate that the Missouri staff proposes corresponds to an average year of final retirement (AYFR)[12] of approximately 1995 while GTE North's new replacement plan is consistent with a 1993 AYFR. We believe GTE North's new plan is reasonable and attainable. GTE North's electromechanical switching retirement plan for Missouri is less aggressive than its plans in other GTE North jurisdictions[13] and the plans of other carriers that our staff has recently reviewed.[14] Furthermore, GTE North's retirement plan represents a reduction in the level of retirements of electromechanical switching to a point well below that which it has already accomplished.[15] Finally, the Missouri staff does not provide adequate support for its contention that the replacements should or will be delayed. As a result, we prescribe a depreciation rate for this account using a 1993 AYFR.

D. *GTE Florida Analog Electronic Switching*

14. GTE Florida proposes a decrease in the projection life[16] for the Analog Electronic Switching Account from 11.5 years to 7.5 years as a result of a new company program which calls for the rapid replacement of its analog electronic switches. The Florida PSC agrees with GTE Florida and recommends adoption of a depreciation rate for this account that is consistent with the carrier's new replacement plan.

15. GTE Florida's proposed new plan substantially accelerates its analog electronic retirements. In part because of this plan, GTE Florida requested permission to file a depreciation study one year earlier than scheduled under this Commission's three year represcription process. Based on its new replacement plan for analog electronic switches, GTE Florida requests a substantial reduction in the projection life for this account which would result in a substantial increase in the depreciation rate. Moreover, GTE Florida claims that failure to prescribe the higher rate this year would assign disproportionate amounts to state ratepayers because of separations changes which will assign more central office costs to the state jurisdiction over the next four years.

16. Our review of GTE Florida's proposal raises several concerns about the plan. We note that GTE Florida's new plan proposes retirements during the 1989-1991 period which are more than four times the retirements experienced during the 1986-88 period, and that the new plan represents an acceleration of 42 percent over the Company's previous plans. Moreover, such a tremendous acceleration in retirements of analog electronic switches is not consistent with the rest of the industry. The life proposed by GTE Florida is 7.5 years; the average of the lives for all other carriers is 15.5 years.

17. In order to review the Company's new plan, the Bureau requested additional data.[17] Based on a preliminary review of the Company's economic studies, we have serious questions about the economic justification for replacement of the existing analog electronic switches. For example, GTE Florida's economic studies show high estimates for line addition costs for analog electronic equipment throughout the replacement period. The high cost of line additions is one of the primary economic factors identified by GTE to support the accelerated replacement plan. The line addition costs should decline during the replacement period, however, because the carrier should

be able to reuse a substantial amount of retired analog electronic equipment in subsequent line additions of remaining analog electronic offices. Finally, we note that GTE Florida already has the highest depreciation rate in the industry among carriers with a substantial investment in analog electronic switches.

18. Accordingly, we do not prescribe a higher rate for GTE Florida's Analog Electronic Switching Account at this time, pending our further review of GTE's replacement plan. We will delay prescription of a new rate for this account until the Bureau has had an opportunity to obtain additional information on these issues and to review the data underlying the GTE Florida replacement plan. We direct the Bureau to continue its review of the plan and make a recommendation to us in 1989.

19. In the interim, the Company should maintain the projection life underlying the current rate. Such action will not adversely affect GTE Florida since it already has one of the highest depreciation rates for analog electronic switches in the industry. In addition, we have depreciation procedures in place which allow the Company to recover its full investment over the life of the equipment.[18] Finally, we do not believe that a carrier's concern about the effect of changes in separations procedures, in itself, warrants the adoption of a substantial increase in depreciation without proper substantiation and review.

E. ***Amortizations for Dying Accounts***

20. Our remaining-life procedures engender a number of technical problems when applied to accounts that are rapidly being phased out (*i.e.*, "dying accounts"). For example, if the final date of termination of service is mis-forecast by as little as a few months, the depreciation rates can change drastically. The most practical way of resolving this problem is to apply an amortization procedure which adjusts the depreciation expense each month to reflect accounting activity.[19] This allows the carriers to reduce the account balance to zero in relatively even increments.

21. During the 1988 review, the Bureau identified eight "dying accounts", and concluded after thorough review that the use of an amortization procedure to write off these accounts is consistent with this Commission's policy and practice. No commenting party opposed this proposal for these accounts. We conclude that special amortization procedures should be used for the accounts and amortization periods indicated below:

Company and Jurisdiction	Account	Amortization Period (Months)
Cincinnati Bell-Kentucky	Crossbar	36
Cincinnati Bell-Ohio	Crossbar	36
Citizens Utilities of Calif.	Analog Electronic	24
GTE Hawaiian Telephone	Crossbar	36
	Autovon	36
Illinois Bell	Step-by-Step	36
	Crossbar	36
New Jersey Bell	Electromechanical Switch.	18

22. The special procedure for calculating the amortization for "dying accounts" is as follows:

1. Determine the net service value (*i.e.*, gross book cost less book reserve less future net salvage) at the beginning of each month.

2. Divide the net service value determined in Step 1 by the number of months remaining in the amortization period. For example, if the amortization period is 36 months, the first month's amortization is 1/36 of the net service value at the beginning of the first month. The second month's amortization is 1/35 of the net service value at the beginning of the second month and so on.

F. ***Effective Dates***

23. Prior to 1987, we allowed the carriers flexibility in the effective dates of our depreciation rates in order to accommodate their need to file tariffs incorporating the new rates.[20] By allowing a carrier to adopt an effective date between January 1 of the filing year and January 1 of the subsequent year, we can balance the requirements of proper accounting, which argue for the immediate imposition of new, more accurate rates, and the realities of the regulatory process, which prevent carriers from immediately responding to changes in their revenue requirements. All of the carriers in this order requested an effective date between January 1, 1988 and January 1, 1989. Inasmuch as no comments were filed in opposition to the requested dates and the companies' requests are within our rules and are consistent with our past depreciation orders, we adopt the effective dates in the Appendix.

G. ***Submission of Whole - Life Depreciation Parameters***

24. In the depreciation prescription orders which we have approved since our decision in *Property Depreciation*,[21] we have required that depreciation filings include whole-life rates so that we could determine the size of the depreciation reserve imbalance and the speed with which our actions were resolving the imbalance. Because of our continued interest in these matters, we require carriers in this order to continue to file whole-life rates that are consistent with the prescribed rates until notified to the contrary.

H. ***Conclusion***

25. Having considered the carriers' proposals, and the studies upon which those proposals are based, the views and recommendations of the states, the responses to the Public Notice, and the Bureau's studies and analyses, we adopt the depreciation rates, amortization amounts, and effective dates listed in the Appendix.

V. ORDERING CLAUSE

26. ACCORDINGLY IT IS ORDERED, pursuant to Sections 1, 4(i), 201-205 and 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 201-205 and 220(b), that the percentages of depreciation and amortization amounts set forth in the Appendix to this Order ARE PRESCRIBED, effective on the dates listed.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] A full review was made for fourteen of the carriers listed in the caption (all except Pacific Northwest Bell Telephone Company). Pacific Northwest Bell is included in this order because its Idaho facilities were studied with Mountain Bell's Idaho facilities.

[2] 47 C.F.R Section 32.9000.

[3] *See generally* 47 U.S.C. § 220(b) (1982). In recent years, we have also prescribed amortization amounts to resolve depreciation accounting problems. *See* Amortization of Depreciation Reserve Imbalances of Local Exchange Carriers Report and Order, 3 FCC Rcd 984 (1988) (hereinafter *Amortization Order)*. An amortization amount is a specific amount to be charged to depreciation expense each year as opposed to a depreciation rate which is applied to the plant investment to determine the depreciation expense charge.

[4] Depreciation Rate Prescriptions Proposed for Domestic Telephone Companies-Notice of Opportunity to Comment, 3 FCC Rcd 5841 (1988).

[5] Of the 760 rates prescribed by this order, only 22 were challenged.

[6] GTE North-Missouri was not affected by the five-year amortization policy we adopted for LECs in 1987 in the *Amortization Order* because we did not previously prescribe depreciation rates for GTE North-Missouri. Prior to this review, the Missouri operation was part of GTE Midwest, a smaller carrier for which we did not prescribe rates because of its size and practical staffing constraints. In 1987, GTE North was formed by combining GTE Indiana, GTE Ohio, and GTE Michigan, three carriers for which we have prescribed rates for several years, with five smaller carriers: GTE Illinois, GTE Pennsylvania, GTE Wisconsin, Garrett Telephone Company, and GTE Midwest.

[7] A reserve deficiency exists when the theoretical reserve *(i.e.,* the amount that would be in the reserve account if the current life and salvage estimate had been used since the plant was placed in service) exceeds the book reserve. *See Amortization Order*, 3 FCC Rcd at 984 n.6.

[8] This figure was determined by analyzing the reserve figures contained in the Appendix to The Prescription of Revised Percentages of Depreciation pursuant to the Communications Act of 1934, as amended, for: The Chesapeake and Potomac Telephone Co. of Virginia, *et al.*, 3 FCC Rcd 1724 (1988).

[9] The Supreme Court held in *Louisiana Public Service Commission v. Federal Communications Commission*, 106 S. Ct. 1890 (1986), that the state commissions are not required to follow FCC-prescribed depreciation methodology and are free to use any depreciation methods, procedures and rates that they choose to for intrastate ratemaking purposes. Thus, in this instance and in other areas in which we disagree with the Missouri or Florida Commissions in this proceeding *(see* paras. 12-19, *infra)*, our resolution of the depreciation issue does not preclude the state from adopting a different procedure for intrastate ratemaking.

[10] *Amortization Order*, 3 FCC Rcd at 988-9.

[11] As is our standard practice, for any account with an average remaining life of 5 years or less, we will continue the use of the remaining-life depreciation procedure. *See* The Prescription of Revised Depreciation Rates for: AT&T Communications of California, Inc., *et al.*, FCC 85-568 (released Oct. 23, 1985), para. 8.

[12] The AYFR is a weighted average for all equipment in a particular category based on the investment and estimated year of final retirement for each piece of equipment.

[13] The AYFRs for electromechanical switching equipment for other GTE North jurisdictions average 1991, or two years earlier than for Missouri.

[14] The AYFRs for electromechanical switching accounts for all carriers that were reviewed this year average 1992, or a year earlier than for Missouri.

[15] For example, GTE North estimates that it will retire only $4 million of electromechanical switching equipment during the 1988-1994 period. It retired more than $12 million during the 1983-1987 period.

[16] The projection life is the current estimate of the expected entire lifetime of an account.

[17] GTE Florida responded to our requests through October 4, 1988. This additional data consisted of economic studies underlying the placement of analog equipment initially and also its replacement by digital.

[18] Since 1981, this Commission has been prescribing rates using the "remaining-life" procedure. In contrast to procedures in place prior to its adoption, the remaining-life procedure assures that the entire investment in an account is depreciated over its life, even when the life estimate is revised. *See* generally, Amendment of Part 31 (Uniform System of Accounts for Class A and Class B Telephone Companies), 83 FCC 2d 267 (1980) *(Property Depreciation), reconsideration*, 87 FCC 2d 916 (1981), *Supplemental Opinion and Order*, 87 FCC 2d 1112 (1981).

[19] *See, e.g.,* The Presciption of Revised Percentages of Depreciation pursuant to Section 220(b) of the Communications Act of 1934, as amended, for: American Telephone and Telegraph Company et al., 96 FCC 2d 257 (1983).

[20] *See, e.g.,* The Prescription of Revised Percentages of Depreciation Pursuant to Section 220(b) of the Communications Act of 1934 as amended for: American Telephone and Telegraph Company, Long Lines Department, 88 FCC 2d 1223 (1982), paras. 56-60.

[21] *See* note 17, *supra*.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
CINCINNATI BELL TELEPHONE COMPANY - KENTUCKY

Effective January 1, 1988

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E	
2112	Motor Vehicles	4.9	14.0	27.1	12.0	-17	
2115	Garage Work Equipment	10.9	5.0	10.0	7.8	-3	
2116	Other Work Equipment	11.5	5.0	8.2	7.5	-9	
2121	Buildings	26.0	-4.0	34.0	2.7	25	
2122	Furniture	10.8	5.0	14.5	7.5	2	
2123	Office Support Equipment	7.0	5.0	25.6	9.9	1	
2123	Company Communications Eqpt	6.4	2.0	17.9	12.5	-37	
2124	General Purpose Computers	4.8	5.0	17.5	16.1	-1	
2211	Analog Electronic Switching	9.4	3.0	28.7	7.3	11	
2212	Digital Electronic Switching	14.7	3.0	15.8	5.5	208	
2215	Step-by-Step Switching	-	-	-	-	-	@
2215	Crossbar Mechanical Switching	-	-7.0	-	-	-	*
2231	Radio Systems	4.1	-6.0	44.9	14.9	2	
2232	Digital Circuit Equipment	8.1	0.0	26.3	9.1	83	
2232	Analog Circuit Equipment	6.5	-5.0	39.7	10.0	23	
2351	Public Telephone	6.6	8.0	75.1	2.6	53	
2362	Other Terminal Equipment	3.9	-4.0	88.6	3.9	0	
2411	Poles	18.4	-32.0	27.3	5.7	-276	
2421	Aerial Cable - Metallic	17.6	-31.0	38.1	5.3	-23	
2421	Aerial Cable - Non Metallic	18.5	-10.0	3.2	5.8	0	
2422	Underground Cable - Metallic	20.0	-46.0	41.5	5.2	476	
2422	Underground Cable -Non Metal	20.0	-5.0	4.3	5.0	0	
2423	Buried Cable - Metallic	23.0	-15.0	21.0	4.1	1	
2423	Buried Cable - Non Metallic	24.0	-5.0	3.1	4.2	0	
2426	Intrabldg Netwrk Cable-Metal	12.3	-60.0	46.6	9.2	65	
2426	Intrabldg Netwrk Ca-NonMetal	11.2	-10.0	7.2	9.2	0	
2431	Aerial Wire	11.4	-50.0	44.2	9.3	29	
2441	Conduit Systems	42.0	-15.0	24.1	2.2	93	

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued for all accounts except for Step-by-Step and Crossbar as indicated below.

@ This account has no investment but it has incurred a reserve shortfall of $95,643 which is to be amortized over one year ending December 31, 1988.

* As described in paragraph 21 of the Order, the net service value for the Crossbar Account is to be amortized over a three year period ending December 31, 1990.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
CINCINNATI BELL TELEPHONE COMPANY - OHIO

Effective January 1, 1988

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E	
2112	Motor Vehicles	4.4	13.0	36.2	11.5	0	
2115	Garage Work Equipment	11.0	5.0	9.6	7.8	-3	
2116	Other Work Equipment	11.3	5.0	13.4	7.2	-32	
2121	Buildings	33.0	-1.0	27.6	2.2	344	
2122	Furniture	11.5	5.0	13.3	7.1	-8	
2123	Office Support Equipment	6.8	5.0	17.9	11.3	-2	
2123	Company Comm. Equipment	5.5	2.0	38.1	10.9	-401	
2124	General Purpose Computers	3.4	5.0	30.9	18.9	0	
2211	Analog Electronic Switching	9.2	3.0	37.9	6.4	1784	
2212	Digital Electronic Switching	14.2	3.0	11.2	6.0	346	
2215	Step-by-Step Switching	-	0.0	-	-	-	●
2215	Crossbar Mechanical Switching	-	-4.0	-	-	-	*
2220	Operator Systems	3.9	3.0	36.2	15.6	109	
2231	Radio Systems	4.3	-17.0	45.5	16.6	-20	
2232	Digital Circuit Equipment	8.1	8.0	27.7	7.9	720	
2232	Analog Circuit Equipment	6.5	-5.0	37.1	10.4	283	
2351	Public Telephone	6.3	8.0	67.3	3.9	172	
2362	Other Terminal Equipment	3.8	-4.0	79.6	6.4	0	
2411	Poles	19.2	-10.0	27.6	4.3	-566	
2421	Aerial Cable-Metallic	17.7	-36.0	41.1	5.4	376	
2421	Aerial Cable-Non Metallic	19.3	-10.0	9.0	5.2	0	
2422	Underground Cable-Metallic	20.0	-25.0	37.0	4.4	1210	
2422	Underground Cable-Non Metal.	21.0	-5.0	9.4	4.6	11	
2423	Buried Cable-Metallic	23.0	0.0	20.3	3.5	-84	
2423	Buried Cable-Non Metal.	24.0	-5.0	9.3	4.0	0	
2424	Submarine Cable	1.0	0.0	65.2	34.8	-1	
2426	Intrabldg Netwrk Cable-Metal.	12.5	-50.0	41.8	8.7	402	
2426	Intrabldg Netwrk Ca-NonMetal.	12.3	-10.0	16.9	7.6	2	
2431	Aerial Wire	11.1	-70.0	53.7	10.5	-24	
2441	Conduit Systems	43.0	-15.0	30.8	2.0	451	

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate depreciation rates and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued for all accounts except for Step-by-Step and Crossbar as indicated below.

● As described in FCC 85-656, the net service value for the Step-by-Step Account is to be amortized over a three year period ending June 30, 1988.

* As described in paragraph 21 of the Order, the net service value for the Crossbar Account is to be amortized over a three year period ending December 31, 1990.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
THE CITIZENS UTILITIES COMPANY OF CALIFORNIA

Effective January 1, 1988

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E	
2112	Motor Vehicles	4.4	18.0	47.8	7.8	0	
2114	Special Purpose Vehicles	9.7	2.0	6.9	9.4	-2	
2115	Garage Work Equipment	7.2	-20.0	11.8	15.0	0	
2116	Other Work Equipment	8.3	7.0	30.5	7.5	-19	
2121	Buildings	37.0	0.0	12.6	2.4	-44	
2122	Furniture	13.1	6.0	20.5	5.6	-26	
2123	Office Equipment	10.8	3.0	19.5	7.2	-9	
2123	Company Comm. Equipment	12.0	0.0	49.2	4.2	-13	
2124	General Purpose Computers	6.3	0.0	20.6	12.6	4	
2211	Analog Electronic Switching	-	0.0	-	-	-	*
2212	Digital Electronic Switching	12.8	6.0	14.6	6.2	-270	
2215	Step By Step Switch.	0.0	0.0	100.0	5.0	0	
2220	Operator Systems	9.7	0.0	3.1	10.0	-1	
2231	Radio Systems	8.8	-1.0	25.6	8.6	-77	
2232	Circuit Equipment	7.5	8.0	25.6	8.9	-192	
2351	Public Telephone	6.6	3.0	47.4	7.5	-3	
2362	Other Terminal Equipment	4.6	0.0	45.9	11.8	-3	
2411	Poles	19.4	-51.0	44.2	5.5	-58	
2421	Aerial Cable	15.2	-21.0	30.3	6.0	196	
2422	Underground Cable	19.5	-3.0	21.3	4.2	101	
2423	Buried Cable	16.7	-5.0	24.2	4.8	80	
2431	Aerial Wire	7.9	-77.0	98.4	9.9	132	
2441	Conduit Systems	46.0	-5.0	9.5	2.1	-47	

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued for all accounts except for Analog Electronic Switching as indicated below.

* As described in paragraph 21 of the Order, the net service value for the Analog Electronic Switching Account is to be amortized over a two year period ending December 31, 1989.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
CONTEL OF CALIFORNIA

Effective January 1, 1988

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E	
2112	Motor Vehicles	5.7	15.0	16.5	12.0	0	
2113	Aircraft	4.5	50.0	35.3	3.3	0	
2116	Other Work Equipment	10.6	8.0	20.0	6.8	-466	
2121	Buildings	18.4	-8.0	36.1	3.9	2	
2122	Furniture	10.7	3.0	16.3	7.5	116	
21232	Company Comm Eq	5.8	2.0	32.6	11.3	-19	
21233	Company Comm Eq EMB	-	0.0	-	-	-	@
2124	General Purpose Computers	3.1	5.0	30.0	21.0	0	
2212	Digital Electronic Sw VIDAR	-	0.0	-	-	-	*
2212	Digital Electronic Switching	8.6	-1.0	22.5	9.1	988	
2215	Electro-Mechanical Switching	2.3	-1.0	68.6	14.1	0	
2220	Operator Systems	1.3	-1.0	68.9	24.7	0	
2231	Radio Systems	13.1	-7.0	51.1	4.3	334	
2232	Circuit Equipment	8.3	-1.0	25.7	9.1	-353	
2321	Customer Premise Wiring	0.0	0.0	60.8	0.0	1941	
2351	Public Telephone	4.8	2.0	49.9	10.0	80	
2362	Other Terminal Equipment	5.2	5.0	38.6	10.8	57	
2411	Poles	11.7	-23.0	34.2	7.6	500	
2421	Aerial Cable	11.1	-23.0	41.1	7.4	888	
2422	Underground Cable	17.5	-7.0	23.1	4.8	177	
2423	Buried Cable	18.6	-6.0	22.0	4.5	-64	
2424	Submarine Cable	8.6	0.0	65.3	4.0	-1	
2431	Aerial Wire	2.4	-66.0	15.3	62.8	0	
2441	Conduit Systems	39.0	-23.0	21.4	2.6	15	

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued for all accounts except for Company Comm. Equipment EMB and Digital Electronic Switching as indicated below.

@ As described in FCC 85-656, the net service value for the Company Comm. Equipment Account is to be amortized over a three year period ending April 30, 1988.

* As described in FCC 85-656, the net service value for the Digital Electronic Switching VIDAR Account is to be amortized over a five year period ending April 30, 1990.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
CONTEL OF NEW YORK, INCORPORATED

Effective January 1, 1988

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	Vehicles	0.0	0.0	92.7	0.0	0
2114	Vehicles - Special Purpose	10.0	6.0	64.5	3.0	0
2115	Work Equipment - Garage	10.0	6.0	76.9	1.7	0
2116	Work Equipment - Other	10.0	6.0	30.1	6.4	-208
2121	Buildings	24.0	5.0	26.5	2.9	-40
2122	Furniture	15.0	10.0	27.5	4.2	-31
2123	Office Equipment	5.7	0.0	51.2	8.6	-34
2124	Computer - General Purpose	4.9	5.0	20.8	15.1	13
2211	COE Switching - Analog	1.9	0.0	58.4	21.9	0
2212	COE Switching - Digital	12.4	0.0	18.5	6.6	269
2215	COE Switch - Step-by-Step	3.3	3.0	83.4	4.1	0
2220	Operator Systems	10.6	0.0	61.0	3.7	0
2231	Radio - Microwave	11.9	0.0	20.8	6.7	-12
2232	COE Circuit	7.0	1.0	28.7	10.0	265
2351	Public Telephone Equipment	5.4	0.0	44.2	10.3	-46
2362	Other Terminal Equipment	7.0	1.0	39.1	8.6	0
2411	Pole Lines	17.2	-31.0	33.3	5.7	125
2421	Aerial Cable	15.6	-14.0	33.1	5.2	572
2422	Underground Cable	18.8	-10.0	31.0	4.2	57
2423	Buried Cable	18.5	-1.0	19.7	4.4	259
2424	Submarine Cable	16.1	-2.0	16.2	5.3	-2
2431	Aerial Wire	2.8	-55.0	46.6	38.7	0
2441	Conduit Systems	31.0	-3.0	22.7	2.6	-54

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
THE DIAMOND STATE TELEPHONE COMPANY

Effective January 1, 1989

	Rate Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate	Annual Amort. Expense
		(years) A	(%) B	(%) C	(%) D=(100%-B-C)/A	($000) E
2112	Motor Vehicles	2.7	27.0	42.1	11.4	-22
2115	Garage Work Equipment	10.2	2.0	26.6	7.0	1
2116	Other Work Equipment	8.6	2.0	28.2	8.1	7
2121	Buildings	30.0	3.0	24.8	2.4	107
2122	Furniture	11.0	8.0	13.6	7.1	0
2123	Office Equipment	6.0	1.0	38.3	10.1	38
2124	General Purpose Computers	4.1	8.0	12.2	19.5	6
2211	Analog Electronic Switching	9.4	3.0	35.1	6.6	1269
2212	Digital Electronic Switching	13.1	3.0	18.6	6.0	49
2220	Operator Systems	9.7	5.0	31.3	6.6	1
2231	Radio Systems	10.1	0.0	39.2	6.0	1
2232	Circuit Equipment DDS	7.8	-4.0	19.5	10.8	-13
2232	Circuit Equipment Other	6.9	4.0	27.7	9.9	641
2351	Public Telephone	5.3	1.0	48.0	9.6	16
2362	Terminal Equipment DDS	5.3	2.0	39.7	11.0	-17
2362	Terminal Equipment Other	8.3	-3.0	26.8	9.2	-243
2411	Poles	24.0	-79.0	53.6	5.2	-43
2421	Aerial Cable	12.6	-11.0	43.5	5.4	640
2422	Underground Cable	18.6	-5.0	25.7	4.3	328
2423	Buried Cable	18.9	-7.0	27.7	4.2	346
2424	Submarine Cable	14.3	0.0	36.8	4.4	0
2426	Intrabuilding Network Cable	14.5	-15.0	33.0	5.7	-5
2441	Conduit Systems	45.0	-15.0	19.6	2.1	-61

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-7, released January 22, 1988, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE FLORIDA INCORPORATED

Effective January 1, 1988

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	Motor Vehicles	6.2	20.0	26.2	8.7	-404
2115	Garage Work Equipment	10.4	11.0	21.8	6.5	-7
2116	Other Work Equipment	8.1	1.0	20.5	9.7	-196
2121	Buildings	28.0	0.0	23.6	2.7	-333
2122	Furniture	9.4	1.0	26.4	7.7	90
2123	Office Support Equipment	6.4	2.0	32.0	10.3	48
2123	Company Comm Equipment	4.9	3.0	46.2	10.4	904
2124	General Purpose Computers	4.1	3.0	31.7	15.9	419
2211	Analog Electronic Switching	6.2	0.0	45.2	8.8	898
2212	Digital Electronic Switching	13.0	3.0	15.7	6.3	1109
2215	Electro-Mechanical Switching	0.9	-4.0	76.0	31.1	0
2220	Operator Systems	6.4	0.0	53.5	7.3	102
2231	Radio Systems	4.8	0.0	68.4	6.6	484
2232	Circuit Equipment	6.2	6.0	30.1	10.3	4074
2351	Public Telephone	3.9	4.0	57.9	9.8	233
2362	Other Terminal Equipment	5.1	3.0	43.2	10.5	530
2411	Poles	13.3	-83.0	51.0	9.9	412
2421	Aerial Cable	10.8	-18.0	33.3	7.8	930
2422	Underground Cable	19.4	-2.0	27.0	3.9	1889
2423	Buried Cable	16.0	-3.0	23.0	5.0	586
2424	Submarine Cable	12.2	-13.0	48.9	5.3	-11
2426	Intrabuilding Network Cable	14.2	-13.0	31.5	5.7	41
2431	Aerial Wire	8.2	-30.0	61.2	8.4	-53
2441	Conduit Systems	44.0	-19.0	18.9	2.3	144

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-7, released January 22, 1988, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED

Effective January 1, 1989

	Rate Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate	Annual Amort. Expense	
		(years) A	(%) B	(%) C	(%) D=(100%-B-C)/A	($000) E	
2112	Motor Vehicles	4.9	13.0	44.1	8.8	0	
2115	Garage Work Equipment	9.3	0.0	32.8	7.2	-4	
2116	Other Work Equipment	6.9	5.0	43.8	7.4	-120	
2121	Buildings	32.0	-3.0	21.6	2.5	-508	
2122	Furniture	11.0	4.0	21.0	6.8	-54	
2123	O.E.-Office Support Eqpt.	5.4	4.0	25.9	13.0	0	
2123	O.E.- Company Comm. Eqpt.	3.6	0.0	55.6	12.3	0	
2124	General Purpose Computers	4.8	5.0	23.9	14.8	0	
2211	Analog Electronic Switching	6.3	-1.0	51.8	7.8	1294	
2212	Digital Electronic Switching	12.9	0.0	16.9	6.4	-51	
2215	EMS Step-by-Step	1.7	-6.0	81.9	14.2	0	
2215	EMS-Crossbar	-	0.0	-	-	-	*
2215	EMS-Autovon	-	-	-	-	-	*
2220	Operator Systems	3.9	-5.0	52.3	13.5	0	
2231	Radio Systems	7.1	-4.0	40.1	9.0	27	
2232	CE-Analog Transpacific	6.1	-5.0	61.6	7.1	-431	
2232	Circuit Equipment	8.0	10.0	31.3	7.3	48	
2341	Large PBX	0.0	0.0	98.8	12.7	0	
2351	Public Telephone	5.4	5.0	67.0	5.2	0	
2362	Other Terminal Equipment	7.5	0.0	44.0	7.5	0	
2411	Poles	21.0	-38.0	27.3	5.3	-386	
2421	Aerial Cable	20.0	-13.0	28.9	4.2	-403	
2422	Underground Cable	21.0	-17.0	22.6	4.5	90	
2423	Buried Cable	23.0	-10.0	22.0	3.8	-129	
2424	Submarine Cable	7.8	-1.0	44.4	7.3	0	
2425	Deep Sea Cable	7.8	-1.0	52.2	6.3	-764	
2426	Intrabuilding Network Cable	15.4	-15.0	27.7	5.7	0	
2431	Aerial Wire	6.8	-31.0	57.7	10.8	37	
2441	Conduit Systems	40.0	-15.0	25.8	2.2	138	

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued for all accounts except for EMS Crossbar and EMS Autovon as indicated below.

* As described in paragraph 21 of the Order, the net service value for the EMS Crossbar Account and the EMS Autovon Account is to be amortized over a three year period ending December 31, 1991.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE NORTH INCORPORATED - MICHIGAN

Effective January 1, 1989

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	Motor Vehicles	4.0	12.0	45.7	10.6	0
2113	Aircraft	1.5	40.0	60.0	0.0	0
2115	Garage Work Equipment	6.9	0.0	38.2	9.0	1
2116	Other Work Equipment	6.5	5.0	43.1	8.0	-86
2121	Buildings	28.0	-3.0	30.3	2.6	-68
2122	Furniture	9.0	5.0	24.0	7.9	71
2123	Company Comm. Equipment	3.3	1.0	54.3	13.5	0
2124	General Purpose Computers	3.2	5.0	19.0	23.8	0
2211	Analog Electronic Switching	8.1	0.0	41.5	7.2	-407
2212	Digital Electronic Switching	13.0	0.0	15.7	6.5	-115
2215	Electro Mechanical - Switching	4.4	6.0	52.5	9.4	0
2215	Electro Mechanical - Recording	4.5	3.0	60.3	8.2	0
2220	Operator Systems	3.2	-1.0	71.1	9.3	0
2231	Radio Facilities	5.5	-8.0	40.8	12.2	-18
2232	Circuit Equipment	7.3	4.0	39.5	7.7	1125
2351	Public Tel.-Terminal Equipment	5.4	1.0	26.6	13.4	0
2362	Oth. Term. Equip.-Ntwk. Chnl.	3.0	1.0	65.2	11.3	0
2411	Poles	14.1	-63.0	59.6	7.3	498
2421	Aerial Cable - Metallic	19.0	-53.0	43.0	5.8	948
2421	Aerial Cable - Non Metallic	22.0	-30.0	7.4	5.6	1
2422	Underground - Metallic	23.0	-15.0	30.4	3.7	44
2422	Underground - Non Metallic	24.0	-13.0	6.8	4.4	0
2423	Buried Cable - Metallic	17.5	-12.0	29.3	4.7	250
2423	Buried Cable - Non Metallic	21.0	-12.0	19.8	4.4	44
2424	Submarine Cable	9.5	-2.0	47.6	5.7	16
2426	Intrbldg. Netwk. Cable	11.9	-12.0	35.8	6.4	0
2431	Aerial Wire	0.0	-50.0	149.4	5.0	0
2441	Conduit Systems	43.0	-8.0	22.4	2.0	56

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE NORTH INCORPORATED - MINNESOTA

Effective January 1, 1988

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	12/31/87 Book Reserve (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112	Motor Vehicles	2.9	10.0	54.1	12.4
2116	Other Work Equipment	7.5	5.0	1.9	12.4
2121	Buildings	13.1	-12.0	55.2	4.3
2123	Company Comm. Equipment	3.0	0.0	80.1	6.6
2212	Digital Electro Switching	18.0	10.0	0.0	5.0
2215	Electro Mechanical - Switching	4.7	7.0	55.3	8.0
2216	E/M - Recording Equipment	2.6	-6.0	83.2	8.8
2232	Circuit Equipment	7.6	8.0	27.8	8.4
2351	Public Tel. Terminal Equipment	2.8	20.0	62.2	6.4
2362	Oth. Term. Equip.-Ntwk. Chnl.	3.0	0.0	53.4	15.5
2411	Poles	8.4	-22.0	32.7	10.6
2421	Aerial Cable-Metallic	10.0	-24.0	49.3	7.5
2422	Underground Cable-Metallic	29.0	-5.0	14.1	3.1
2423	Buried Cable-Metallic	15.9	-6.0	38.2	4.3
2431	Aerial Wire	-	-46.0	146.0	5.0
2441	Conduit Systems	33.0	-5.0	45.0	1.8

The figures in Columns B, C, and D are percentages of gross book cost.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE NORTH INCORPORATED - MISSOURI

Effective January 1, 1989

	Rate Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate	Annual Amort. Expense	First Year ELG
		(years) A	(%) B	(%) C	(%) D=(100%-B-C)/A	($000) E	
2112	Motor Vehicles	4.3	13.0	37.1	11.6	0	1982
2115	Garage Work Equipment	12.2	0.0	24.8	6.2	0	1982
2116	Other Work Equipment	10.1	6.0	22.8	7.0	19	1982
2121	Buildings	29.0	5.0	26.9	2.3	-99	1982
2122	Furniture	8.4	9.0	32.6	7.0	5	1982
2123	Company Comm. Equipment	5.0	-5.0	33.1	14.4	0	
2124	General Purpose Computers	3.3	8.0	12.9	24.0	0	1986
2211	Analog Electronic Switching	0.0	0.0	0.0	0.0	704	1982
2212	Digital Electronic Switching	12.9	10.0	14.0	5.9	-478	1982
2215	Electro Mechanical-Switching	5.4	1.0	58.5	7.5	449	
2215	Recording Equipment	6.2	0.0	47.2	8.5	-5	
2231	Radio Facilities	5.7	-5.0	54.8	8.8	4	1982
2232	Circuit Equipment	6.7	20.0	23.9	8.4	389	1982
2351	Public Tel. Term. Equpment	5.1	1.0	31.0	13.3	-71	
2362	Other Term. Equip. Ntwk. Chnl.	3.6	1.0	77.9	5.9	0	
2411	Poles	11.4	-25.0	39.5	7.5	-13	1982
2421	Aerial Cable-Metallic	10.5	-6.0	32.3	7.0	304	1982
2421	Aerial Cable-Non Metallic	21.0	-5.0	9.1	4.6	-0	1983
2422	Underground-Metallic	18.7	0.0	25.9	4.0	127	1982
2422	Underground-Non Metallic	25.0	-2.0	7.6	3.8	0	1982
2423	Buried Cable-Metallic	13.0	0.0	30.5	5.3	333	1982
2423	Buried Cable-Non Metallic	21.0	-2.0	8.9	4.4	-6	1983
2426	Intrabldg. Netwk. Cable	12.0	-7.0	31.5	6.3	0	1982
2431	Aerial Wire	4.4	-42.0	73.7	15.5	0	1982
2441	Conduit Systems	42.0	-8.0	22.4	2.0	-11	1982

The figures in Columns B, C, and D are percentages of gross book cost.

Since amortization for this jurisdiction is being ordered for the first time here, the reserve level in Column C is the theoretical reserve. The amortization amounts in Column E reflect amortization of the January 1, 1988 reserve imbalance over a five year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE NORTHWEST INCORPORATED - IDAHO

Effective January 1, 1989

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	Motor Vehicles	5.2	20.0	34.3	8.8	0
2115	Garage Work Equipment	12.8	5.0	41.8	4.2	3
2116	Other Work Equipment	9.2	13.0	27.1	6.5	-20
2121	Buildings	24.0	9.0	19.8	3.0	50
2122	Furniture	14.0	20.0	16.9	4.5	-4
2123	Office Equipment	8.8	15.0	35.1	5.7	-5
2123	Company Comm. Equipment	4.2	0.0	56.3	10.4	0
2124	General Purpose Computers	3.9	10.0	30.5	15.3	0
2212	Digital Electronic Switching	14.0	3.0	22.0	5.4	298
2215	Step-by-Step Switching Equip.	6.8	0.0	60.8	5.8	1367
2220	Analog Operator Systems	8.5	-3.0	25.0	9.2	0
2232	Digital Cir. Test. Equipment	8.0	10.0	25.8	8.0	18
2232	Lightwave Circ. Equipment	8.7	7.0	33.9	6.8	325
2351	Public Tel. Coin Operated	3.7	0.0	63.3	9.9	0
2351	Public Tel. Coinless	6.7	0.0	27.8	10.8	0
2362	Terminating Equipment	3.9	0.0	31.2	17.6	0
2362	Multi-Plexing Equipment	2.2	0.0	55.0	20.5	0
2411	Poles	14.7	-70.0	58.2	7.6	221
2421	Aerial Cable - Metallic	14.8	-30.0	34.2	6.5	73
2421	Aerial Cable - Non Metallic	18.4	-5.0	16.7	4.8	0
2422	UG Cable-Metallic	21.0	-12.0	23.5	4.2	42
2422	UG Cable-Non Metallic	18.4	-5.0	10.6	5.1	0
2423	Buried Cable - Metallic	15.9	-10.0	24.6	5.4	289
2423	Buried Cable - Non Metallic	18.4	-5.0	10.9	5.1	0
2424	Submarine Cable - Metallic	13.4	0.0	49.0	3.8	18
2426	Intrabuilding - Metallic	14.1	-30.0	28.9	7.2	0
2431	Aerial Wire	13.0	-75.0	83.0	7.1	34
2441	Conduit Systems	40.0	-5.0	20.1	2.1	6

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE NORTHWEST INCORPORATED - MONTANA

Effective January 1, 1989

	Rate Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate	Annual Amort. Expense
		(years) A	(%) B	(%) C	(%) D=(100%-B-C)/A	($000) E
2112	Motor Vehicles	5.2	20.0	40.2	7.7	0
2116	Other Work Equipment	9.2	13.0	35.9	5.6	5
2121	Buildings	21.0	9.0	29.3	2.9	-3
2122	Furniture	14.0	20.0	25.4	3.9	-1
2123	Office Equipment	8.8	15.0	24.3	6.9	-2
2123	Company Comm. Equipment	4.2	0.0	65.1	8.3	0
2215	Electromechanical	7.1	-5.0	58.8	6.5	-6
2231	Radio	9.9	0.0	31.9	6.9	20
2232	Circuit	8.3	0.0	33.7	8.0	3
2351	Public Tel. - Coin Operated	3.7	0.0	67.3	8.8	0
2362	Terminating Equipment	3.9	0.0	72.0	7.2	0
2362	Multi-Plexing Equipment	2.2	0.0	76.5	10.7	0
2411	Poles	14.9	-70.0	76.2	6.3	40
2421	Aerial Cable - Metallic	12.9	-40.0	51.5	6.9	28
2422	Underground Cable - Metallic	19.7	-20.0	27.6	4.7	2
2423	Buried Cable - Metallic	18.2	-15.0	27.9	4.8	22
2426	Intrabldg. - Metallic	12.3	-40.0	42.8	7.9	0
2431	Aerial Wire	6.1	-70.0	42.4	20.9	14
2441	Conduit Systems	45.0	-5.0	8.0	2.2	0

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE NORTHWEST INCORPORATED - OREGON

Effective January 1, 1989

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	Motor Vehicles	5.2	20.0	38.9	7.9	0
2115	Garage Work Equipment	12.8	5.0	38.6	4.4	1
2116	Other Work Equipment	9.2	13.0	25.5	6.7	-14
2121	Buildings	32.0	13.0	15.5	2.2	77
2122	Furniture	14.0	20.0	14.5	4.7	-48
2123	Office Equipment	8.8	15.0	28.8	6.4	-15
2123	Company Comm. Equipment	4.2	5.0	62.3	7.8	0
2124	General Purpose Computers	3.9	10.0	32.5	14.7	0
2211	Analog Electronic Switching	8.2	2.0	25.8	8.8	0
2212	Digital Electronic Switching	12.8	3.0	14.5	6.4	118
2214	Electromechanical Switching	5.8	-1.0	8.9	15.9	0
2220	Analog Operator Systems	3.0	-3.0	78.5	8.2	0
2231	Radio	7.9	5.0	47.9	6.0	-28
2232	Circuit	8.2	7.0	30.2	7.7	589
2351	Public Tel. - Coin Operated	3.7	5.0	73.3	5.9	0
2351	Public Telephone - Coinless	6.7	5.0	22.9	10.8	0
2362	Terminating Equipment	3.9	0.0	59.6	10.4	0
2362	Multi-Plexing Equipment	2.2	0.0	73.8	11.9	0
2411	Poles	16.6	-85.0	62.0	7.4	343
2421	Aerial Cable - Metallic	16.3	-35.0	46.7	5.4	1172
2421	Aerial Cable - Non Metal.	18.7	-5.0	6.4	5.3	0
2422	Underground Cable - Metallic	21.0	-25.0	25.6	4.7	226
2422	UG. Cable - Non Metal.	18.5	-5.0	11.5	5.1	0
2423	Buried Cable - Metallic	15.3	-10.0	26.7	5.4	159
2423	Buried Cable - Non Metal.	18.7	-5.0	1.3	5.5	0
2424	Submarine Cable - Metallic	9.3	0.0	52.5	5.1	10
2426	Intrabldg. -Metallic	13.0	-35.0	39.7	7.3	0
2431	Aerial Wire	13.1	-80.0	85.8	7.2	93
2441	Conduit Systems	42.0	-5.0	12.9	2.2	-47

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE NORTHWEST INCORPORATED - WASHINGTON

Effective January 1, 1989

	Rate Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate	Annual Amort. Expense
		(years) A	(%) B	(%) C	(%) D=(100%-B-C)/A	($000) E
2112	Motor Vehicles	5.2	20.0	36.8	8.3	0
2113	Aircraft	3.5	70.0	-6.9	10.5	0
2115	Garage Work Equipment	12.8	5.0	39.8	4.3	5
2116	Other Work Equipment	9.2	13.0	29.4	6.3	125
2121	Buildings	31.0	14.0	9.6	2.5	492
2122	Furniture	14.0	20.0	14.7	4.7	-191
2123	Office Equipment	8.8	15.0	31.5	6.1	-6
2123	Company Comm. Equipment	4.2	5.0	55.8	9.3	0
2124	General Purpose Computers	4.6	10.0	32.3	12.5	0
2211	Analog Electronic Switch.	8.5	2.0	34.6	7.5	1434
2212	Digital Electronic Switch.	12.8	5.0	16.8	6.1	65
2215	Electromechanical Switch.	3.8	0.0	5.7	24.8	0
2220	Operator Systems	1.9	1.0	58.3	21.4	500
2220	Operator Systems - General	5.8	1.0	28.8	12.1	0
2231	Radio Systems	7.4	10.0	37.0	7.2	81
2232	Circuit Equipment	7.9	10.0	28.2	7.8	995
2351	Public Tel. - Coin Operated	3.7	10.0	66.1	6.5	0
2351	Public Tel. - Coinless	6.7	10.0	27.3	9.4	0
2362	Terminating Equipment	5.5	0.0	74.4	4.7	0
2362	Multiplexing Equipment	3.6	0.0	90.6	2.6	0
2411	Poles	17.2	-86.0	58.1	7.4	749
2421	Aerial Cable - Metallic	14.4	-33.0	31.1	7.1	455
2421	Aerial Cable - Non Metal.	18.6	-5.0	8.0	5.2	0
2422	UG. Cable - Metallic	19.1	-20.0	31.6	4.6	1031
2422	UG. Cable - Non Metal.	22.0	-5.0	10.9	4.3	0
2423	Buried Cable - Metallic	17.4	-5.0	25.9	4.5	802
2423	Buried Cable - Non Metal.	18.6	-5.0	5.0	5.4	0
2424	Submarine Cable - Metallic	9.3	0.0	52.7	5.1	-13
2426	Intrabldg. - Metallic	13.0	-35.0	34.2	7.8	0
2426	Intrabldg. - Non Metal.	16.8	-5.0	13.2	5.5	0
2431	Aerial Wire	10.4	-60.0	85.3	7.2	28
2441	Conduit Systems	41.0	-5.0	17.8	2.1	87

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
THE ILLINOIS BELL TELEPHONE COMPANY
Effective January 1, 1989

	Rate Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate	Annual Amort. Expense	
		(years) A	(%) B	(%) C	(%) D=(100%-B-C)/A	($000) E	
2112	Motor Vehicles	4.0	13.0	46.1	10.2	-1324	
2115	Garage Work Equipment	10.6	8.0	55.8	3.4	-8	
2115	Other Work Equipment	6.8	8.0	38.7	7.8	-81	
2121	Buildings	31.0	0.0	27.4	2.3	3625	
2122	Furniture	9.5	5.0	28.8	7.0	588	
2123	Office Support Equipment	7.0	5.0	30.3	9.2	397	
2123	OCE - Station Apparatus	7.5	25.0	7.9	8.9	115	
2123	Other Comm. Equipment - PBX	3.1	0.0	80.8	6.2	11	
2124	Computer Systems	3.7	3.0	28.8	18.4	-4518	
2124	Other Comm. Equipment - Data	6.3	-1.0	28.7	11.5	1675	
2211	C.O.E. - Electronic Analog	8.2	-1.0	44.5	6.9	43344	
2212	C.O.E. - Electronic Digital	12.9	2.0	12.7	6.6	-272	
2215	C.O.E. - Step-by-Step CDO	-	-7.0	-	-	-	*
2215	C.O.E. - Crossbar	-	-8.0	-	-	-	*
2220	C.O.E. - Operator Systems	6.1	3.0	56.9	6.6	-364	
2231	C.O.E. - Radio	9.0	2.0	37.5	6.7	20	
2232	C.O.E. - Circuit DDS	6.0	-1.0	29.4	11.9	11	
2232	C.O.E. - Circuit Digital	7.2	-1.0	29.8	9.9	8890	
2232	C.O.E. - Circuit Analog	6.4	-6.0	43.6	9.8	4458	
2341	Large PBX	-	-	102.9	5.0	-103	
2351	Public Telephone Equipment	5.0	2.0	37.9	12.0	-234	
2362	Other Terminal Equipment	-	-	95.3	5.0	-998	
2411	Poles	23.0	-89.0	76.5	4.9	2654	
2421	Aerial Cable Exch. - Metallic	18.3	-54.0	38.4	6.3	6430	
2421	Aerial Cable Toll - Metallic	5.2	15.0	8.2	14.8	0	
2422	Ungrd. Cable Exch. - Optic	16.7	-16.0	13.2	6.2	100	
2422	Ungrd. Cable Toll - Optic	16.5	0.0	8.3	5.6	156	
2422	Ungrd. Cable Exch - Metallic	18.8	-19.0	41.6	4.1	20425	
2422	Ungrd. Cable Toll - Metallic	10.1	3.0	43.2	5.3	875	
2423	Buried Cable Exch. - Optic	19.8	-10.0	6.2	5.2	0	
2423	Buried Cable Toll - Optic	15.6	0.0	9.3	5.8	54	
2423	Buried Cable Exch. - Metallic	17.0	-12.0	29.9	4.8	11830	
2423	Buried Cable Toll - Metallic	9.7	1.0	50.2	5.0	713	
2424	Submarine Cable - Metallic	15.8	-2.0	62.9	2.5	11	
2426	Intrabldg. - Optic	14.4	-6.0	14.1	6.4	11	
2426	Intrabldg. - Metallic	17.8	-7.0	30.8	4.3	4207	
2441	Underground Conduit	48.0	-5.0	24.0	1.7	1787	

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 87-32, released January 29, 1987, are continued for all accounts except for Step-by-Step CDO and Crossbar as indicated below.

* As described in paragraph 21 of the Order, the net service value for the Step-by-Step CDO Account and the Crossbar Account is to be amortized over a three year period ending December 31, 1991.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY - ARIZONA

Effective January 1, 1988

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	Motor Vehicles	4.1	19.0	39.0	10.2	-9
2114	Special Purpose Vehicles	12.2	23.0	20.8	4.6	-83
2115	Garage Work Equipment	12.2	23.0	20.7	4.6	-19
2116	Other Work Equipment	12.2	23.0	20.8	4.6	-186
2121	Buildings	30.0	-10.0	16.0	3.1	456
2122	Furniture	12.9	3.0	20.9	5.9	33
2123	Office Equipment	7.3	5.0	20.9	10.2	13
2123	Company Comm. Equipment	3.5	1.0	51.6	13.5	-14
2124	General Purpose Computers	4.9	5.0	46.8	9.8	0
2211	Analog Electronic Switching	9.5	2.0	28.9	7.3	4845
2212	Digital Electronic Switching	13.3	3.0	7.4	6.7	0
2215	Step By Step Switching	4.9	-15.0	67.4	9.7	0
2215	Crossbar Switching	2.2	-2.0	41.0	27.7	0
2220	Operator Systems	9.0	3.0	37.8	6.6	87
2231	Radio Systems	9.1	-8.0	36.7	7.8	-125
2231	Circuit DDS	4.6	-4.0	41.9	13.5	159
2232	Circuit Equipment	7.3	3.0	26.6	9.6	4056
2351	Public Telephone	2.5	1.0	72.8	10.5	0
2362	Large PBX-DDS	6.0	1.0	62.4	6.1	0
2362	Large PBX-Other	6.0	3.0	71.3	4.3	0
2411	Poles	16.7	-49.0	38.4	6.6	-1030
2421	Aerial Cable	15.1	-9.0	38.5	4.7	1501
2422	Underground Cable	21.0	-3.0	23.8	3.8	3822
2423	Buried Cable	18.7	1.0	23.2	4.1	3766
2424	Submarine Cable	21.0	0.0	-107.5	9.9	0
2426	Intrabuilding Network Cable	14.5	-12.0	12.3	6.9	-1982
2431	Aerial Wire	12.1	-32.0	30.1	8.4	335
2441	Conduit Systems	48.0	-11.0	17.7	1.9	541

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in in FCC 88-14, released January 21, 1988, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
MOUNTAIN STATES TELEPHONE AND TELEGRAH COMPANY - COLORADO

Effective January 1, 1989

	Rate Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate	Annual Amort. Expense
		(years) A	(%) B	(%) C	(%) D=(100%-B-C)/A	($000) E
2112	Motor Vehicles	3.7	11.0	52.1	10.0	0
2113	Aircraft	2.4	50.0	36.7	5.5	0
2114	Special Purpose Vehicles	9.5	8.0	0.0	9.7	0
2115	Garage Work Equipment	9.5	8.0	39.4	5.5	15
2116	Other Work Equipment	9.5	8.0	39.5	5.5	271
2121	Buildings	31.0	-10.0	20.5	2.9	851
2122	Furniture	10.1	1.0	18.0	8.0	-35
2123	Office Equipment	5.4	0.0	18.2	15.1	-44
2123	Company Comm. Equipment	4.4	-1.0	53.3	10.8	335
2124	General Purpose Computers	3.4	2.0	42.0	16.5	0
2211	Analog Electronic Switching	9.3	4.0	28.6	7.2	9380
2212	Digital Electronic Switching	13.7	5.0	9.1	6.3	0
2215	Step By Step Switching	5.4	-5.0	64.9	7.4	1013
2215	Crossbar Switching	2.1	-5.0	59.6	21.6	0
2220	Operator Systems	6.8	4.0	5.1	13.4	10
2231	Radio Systems	9.0	-7.0	27.2	8.9	-160
2231	Circuit DDS	4.4	-2.0	27.6	16.9	-249
2232	Circuit Equipment	7.4	1.0	28.5	9.5	1739
2351	Public Telephone	4.4	2.0	73.9	5.5	407
2362	Large PBX-DDS	3.2	1.0	72.6	8.3	0
2362	Large PBX-Other	5.1	-1.0	77.7	4.6	0
2411	Poles	13.8	-49.0	58.7	6.5	269
2421	Aerial Cable	15.9	-13.0	33.6	5.0	1360
2422	Underground Cable	19.3	-8.0	21.5	4.5	2986
2423	Buried Cable	18.3	0.0	22.3	4.2	1289
2424	Submarine Cable	18.4	0.0	25.8	4.0	-1
2426	Intrabuilding Network Cable	13.1	-2.0	31.0	5.4	-179
2431	Aerial Wire	5.7	-30.0	60.0	12.3	1370
2441	Conduit Systems	46.0	-7.0	15.6	2.0	-38

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 85-656, released December 31, 1985, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY - IDAHO

Effective January 1, 1988

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E	
2112	Motor Vehicles	3.9	17.0	37.6	11.6	-13	
2114	Special Purpose Vehicles	10.0	12.0	0.0	8.8	0	
2115	Garage Work Equipment	10.0	12.0	37.0	5.1	-6	
2116	Other Work Equipment	10.0	12.0	36.3	5.2	-107	
2121	Buildings	30.0	-1.0	25.9	2.5	110	
2122	Furniture	11.7	3.0	20.8	6.5	-11	
2123	Office Equipment	6.1	4.0	19.6	12.5	-8	
2123	Company Comm. Equipment	4.7	1.0	44.5	11.6	0	
2124	General Purpose Computers	3.5	0.0	39.1	17.4	0	
2211	Analog Electronic Switching	9.3	3.0	31.7	7.0	1236	
2212	Digital Electronic Switching	16.0	3.0	6.8	5.6	0	
2215	Step By Step Switching	1.4	-6.0	67.3	27.6	0	
2215	Crossbar Switching	1.4	-1.0	74.3	19.1	0	
2220	Operator Systems	8.4	3.0	23.9	8.7	2	
2231	Radio Systems	7.8	0.0	61.1	5.0	-101	
2231	Circuit DDS	6.8	-4.0	38.4	9.6	0	
2232	Circuit Equipment	7.5	6.0	31.1	8.4	239	
2351	Public Telephone	3.2	1.0	57.6	12.9	0	
2362	Large PBX-DDS	4.5	1.0	52.3	10.4	0	
2362	Large PBX-Other	4.7	1.0	62.1	7.9	0	
2411	Poles	10.6	-51.0	52.1	9.3	214	
2421	Aerial Cable	13.1	-16.0	33.0	6.3	572	
2422	Underground Cable	20.0	-1.0	26.4	3.7	489	
2423	Buried Cable	20.0	-2.0	23.6	3.9	530	
2424	Submarine Cable	23.0	0.0	45.4	2.4	0	
2426	Intrabuilding Network Cable	13.4	-4.0	30.9	5.5	-18	
2431	Aerial Wire	5.1	-51.0	-51.2	39.6	572	●
2441	Conduit Systems	47.0	-7.0	19.4	1.9	67	

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued except for Aerial Wire as indicated below.

● As described in FCC 85-656, the January 1, 1985 reserve imbalance is to be amortized over a three year period ending September 30, 1988.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY - MONTANA

Effective January 1, 1989

	Rate Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate	Annual Amort. Expense	
		(years) A	(%) B	(%) C	(%) D=(100%-B-C)/A	($000) E	
2112	Motor Vehicles	3.8	14.0	45.9	10.6	0	
2114	Special Purpose Vehicles	10.5	19.0	0.0	7.7	0	
2115	Garage Work Equip	10.7	19.0	25.9	5.1	-3	
2116	Other Work Equipment	10.5	19.0	23.3	5.5	-167	
2121	Buildings	22.0	-10.0	30.4	3.6	582	
2122	Furniture	10.6	1.0	24.7	7.0	-14	
2123	Office Support Equip	6.0	1.0	25.2	12.3	-6	
2123	Company Comm Equip	3.2	1.0	62.1	11.5	0	
2124	General Purpose Cmptr	3.2	5.0	26.6	21.4	0	
2211	Analog Elect Sw Equip	9.2	3.0	33.0	7.0	554	
2212	Digital Elect Sw Eq	13.3	3.0	9.3	6.6	0	
2215	Step By Step Sw	6.0	-7.0	52.9	9.0	0	
2215	Crossbar Switching	4.2	-3.0	47.8	13.1	0	
2220	Operator Systems	7.1	3.0	35.5	8.7	17	
2231	Radio Systems	10.0	-8.0	50.8	5.7	-8	
2232	Circuit Equipment	7.7	2.0	29.7	8.9	481	
2232	Circuit DDS	8.0	-3.0	0.0	12.9	0	
2251	Pub Tele Term Equip	5.3	1.0	60.4	7.3	0	
2362	Large PBX - DDS	6.0	1.0	0.0	16.5	0	
2362	Large PBX - OTH	6.1	1.0	65.5	5.5	0	
2411	Pole Lines	8.9	-60.0	87.7	8.1	1066	
2421	Aerial Cable	17.0	-18.0	27.8	5.3	-31	
2422	Underground Cable	18.4	-21.0	32.2	4.8	400	
2423	Buried Cable	20.0	8.0	19.0	3.7	46	
2424	Submarine Cable	20.0	0.0	40.1	3.0	-1	
2426	Intra Ntwk Cable	14.7	10.0	25.2	4.4	26	
2431	Aerial Wire	4.6	-40.0	79.2	13.2	784	●
2441	Conduit Systems	48.0	-7.0	27.0	1.7	86	

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued for all accounts except for Aerial Wire as indicated below.

● Amortization of the reserve imbalance over a two year period ending December 31, 1990.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY - NEW MEXICO

Effective January 1, 1988

	Rate Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate	Annual Amort. Expense
		(years) A	(%) B	(%) C	(%) D=(100%-B-C)/A	($000) E
2112	Motor Vehicles	3.8	16.0	38.4	12.0	61
2114	Special Purpose Vehicles	9.2	10.0	0.0	9.8	0
2115	Garage Work Equipment	9.2	10.0	26.0	7.0	-3
2116	Other Work Equipment	9.2	10.0	25.9	7.0	-138
2121	Buildings	28.0	-5.0	18.1	3.1	-98
2122	Furniture	11.7	1.0	51.8	4.0	91
2123	Office Support Equip	5.2	0.0	-26.6	24.3	0
2123	Company Comm. Equipment	2.9	4.0	59.1	12.7	0
2124	Gen'l Purpose Computers	3.3	2.0	34.3	19.3	0
2211	Analog Elect Switching	9.7	3.0	27.7	7.1	2189
2212	Digital Elect Switching	10.9	3.0	8.3	8.1	0
2215	Step By Step Switching	4.4	-16.0	55.8	13.7	0
2215	Crossbar Switching	2.3	-10.0	54.2	24.3	0
2220	Operator Systems	7.1	3.0	30.9	9.3	0
2231	Radio Systems	8.1	-5.0	36.2	8.5	200
2232	Circuit - DDS	4.4	-4.0	5.3	22.4	-12
2232	Circuit Equip. Other	7.3	3.0	26.4	9.7	1186
2341	Large PBX - DDS	4.0	1.0	71.0	7.0	0
2341	Large PBX - Oth	4.5	1.0	47.4	11.5	0
2351	Pub. Tele. Term. Equipment	2.4	1.0	76.1	9.5	0
2411	Poles	11.9	-27.0	44.9	6.9	-211
2421	Aerial Cable	15.9	-16.0	35.0	5.1	467
2422	Underground Cable	19.3	-1.0	22.1	4.1	346
2423	Buried Cable	19.4	-3.0	25.1	4.0	1340
2424	Submarine Cable	22.0	0.0	90.4	0.4	0
2426	Intrabuilding Network Cable	14.1	-7.0	26.6	5.7	45
2431	Aerial Wire	6.8	-20.0	-5.0	18.4	0
2441	Conduit Systems	47.0	-7.0	17.2	1.9	28

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY - UTAH

Effective January 1, 1988

	Rate Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate	Annual Amort. Expense
		(years) A	(%) B	(%) C	(%) D=(100%-B-C)/A	($000) E
2112	Motor Vehicles	3.6	11.0	44.3	12.4	-120
2114	Special Purpose Vehicles	9.7	14.0	0.0	8.9	0
2115	Garage Work Equipment	9.7	14.0	-10.7	10.0	-22
2116	Other Work Equipment	9.7	14.0	24.1	6.4	-239
2121	Buildings	34.0	-2.0	19.8	2.4	588
2122	Furniture	7.9	2.0	15.2	10.5	81
2123	Office Equipment	6.0	1.0	9.8	14.9	27
2123	Company Comm. Equipment	2.2	1.0	93.6	2.5	0
2124	General Purpose Computers	3.1	2.0	40.5	18.5	0
2211	Analog Electronic Switching	9.6	1.0	27.9	7.4	2645
2212	Digital Electronic Switching	12.7	3.0	14.1	6.5	0
2215	Step By Step Switching	5.4	-5.0	58.7	8.6	0
2215	Crossbar Switching	2.0	-2.0	71.1	15.5	0
2220	Operator Systems	11.2	3.0	21.9	6.7	70
2231	Radio Systems	8.2	-5.0	29.5	9.2	-168
2231	Circuit DDS	3.8	0.0	26.7	19.3	-27
2232	Circuit Equipment	7.2	0.0	31.1	9.6	2942
2351	Public Telephone	2.2	1.0	61.3	17.1	0
2362	Large PBX-DDS	4.3	5.0	40.4	12.7	0
2362	Large PBX-Other	0.0	5.0	95.0	0.0	0
2411	Poles	16.1	-46.0	36.3	6.8	-334
2421	Aerial Cable	16.9	-9.0	34.6	4.4	382
2422	Underground Cable	19.4	-10.0	27.0	4.3	1463
2423	Buried Cable	22.0	-1.0	25.1	3.5	2148
2426	Intrabuilding Network Cable	13.1	-3.0	34.8	5.2	132
2431	Aerial Wire	5.8	8.0	44.0	8.3	-1
2441	Conduit Systems	45.0	-7.0	23.5	1.9	143

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 85-656, released December 31, 1985, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY - WYOMING

Effective January 1, 1989

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	Motor Vehicles	3.7	8.0	53.1	10.5	0
2114	Special Purpose Vehicles	19.4	11.0	0.0	4.6	0
2115	Garage Work Equipment	19.3	12.0	15.5	3.8	-13
2116	Other Work Equipment	19.4	11.0	17.7	3.7	-161
2121	Buildings	29.0	-9.0	24.1	2.9	173
2122	Furniture	8.8	0.0	30.9	7.9	23
2123	Office Equipment	5.9	0.0	32.9	11.4	16
2123	Company Comm. Equipment	2.1	0.0	58.9	19.6	0
2124	General Purpose Computers	3.1	0.0	29.1	22.9	0
2211	Analog Electronic Switch.	10.5	3.0	33.1	6.1	800
2212	Digital Electronic Switch.	20.0	3.0	0.0	4.9	0
2212	Digital ESS-Saratoga	10.4	3.0	5.6	8.8	0
2215	Step by Step Switch.	3.8	-10.0	67.8	11.1	0
2215	Crossbar Switching	5.8	-15.0	60.8	9.3	0
2220	Operator Systems	7.2	3.0	54.8	5.9	15
2231	Radio Systems	8.4	-11.0	46.4	7.7	200
2232	Circuit Equip.-Other	8.2	2.0	36.4	7.5	1713
2232	Circuit Equip.-DDS	8.0	0.0	0.0	12.5	0
2351	Pub Tele Term Equip	2.2	3.0	64.1	15.0	0
2362	Large PBX-Other	3.0	9.0	33.3	19.2	0
2411	Poles	7.7	-64.0	64.0	13.0	-228
2421	Aerial Cable	15.8	-17.0	32.2	5.4	262
2422	Underground Cable	19.1	-7.0	24.7	4.3	429
2423	Buried Cable	22.0	-1.0	22.8	3.6	-501
2424	Submarine Cable	19.1	0.0	50.5	2.6	0
2426	Intrabuilding Network Cable	13.1	-9.0	28.3	6.2	8
2431	Aerial Wire	4.8	-20.0	49.5	14.7	0
2441	Conduit Systems	49.0	-7.0	15.0	1.9	11

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
NEVADA BELL

Effective January 1, 1989

	Rate Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate	Annual Amort. Expense
		(years)	(%)	(%)	(%)	($000)
		A	B	C	D=(100%-B-C)/A	E
2112	Motor Vehicles	4.1	30.0	48.5	5.2	-116
2114	Special Purpose Vehicles	16.9	12.0	26.0	3.7	-2
2115	Garage Work Equipment	16.9	12.0	30.6	3.4	-3
2116	Other Work Equipment	16.9	12.0	30.1	3.4	-40
2121	Buildings	27.0	-2.0	18.5	3.1	-85
2122	Furniture	13.5	6.0	27.1	5.0	4
2123	Office Equipment - Other	7.1	6.0	25.5	9.6	0
2123	Office Comm. Equipment	6.2	2.0	-24.0	19.7	121
212A	General Purpose Computers	7.8	3.0	36.3	7.8	12
2211	Analog Electronic Switching	9.0	0.0	32.3	7.5	366
2212	Digital Electronic Switching	13.1	3.0	15.8	6.2	142
2215	Step By Step	6.3	-4.0	90.9	2.1	0
2215	Crossbar	5.3	-2.0	82.6	3.7	0
2220	Operator Systems - Analog	5.2	-4.0	25.7	15.1	0
2220	Operator Systems - Digital	9.2	3.0	25.3	7.8	0
2231	Radio Systems	5.9	-6.0	50.5	9.4	-158
2232	Circuit Equipment - Other	6.9	8.0	17.5	10.8	172
2232	Circuit Eqpt. Dig. Data Syst.	3.6	33.0	48.1	5.3	8
2351	Public Telephone	4.8	0.0	63.4	7.6	-41
2362	Other Term. Eq. - PBX Other	5.7	-4.0	33.6	12.4	30
2362	Other Term. Eq. - PBX DDS	3.1	2.0	70.0	9.0	0
2362	Other Term. Eq. - Tel & Misc.	7.2	21.0	50.5	4.0	30
2362	Other Term. Eq. - Teletypewr.	5.1	0.0	-16.7	22.9	14
2411	Poles	18.2	-27.0	84.5	2.3	640
2421	Aerial Cable - Exchange	11.3	-3.0	47.6	4.9	505
2421	Aerial Cable - Interoffice	11.2	-25.0	40.5	7.5	37
2422	Underground Cable - Exchange	14.8	-7.0	33.2	5.0	401
2422	Underground Cable - Interofc.	21.0	-6.0	42.1	3.0	45
2423	Buried Cable - Exchange	21.0	-14.0	27.3	4.1	270
2423	Buried Cable - Interoffice	12.1	-6.0	42.3	5.3	86
2426	Intrabuilding Network Cable	11.8	-3.0	36.0	5.7	0
2431	Aerial Wire - Exchange	3.4	-40.0	103.2	10.8	0
2431	Aerial Wire - Toll	16.7	-12.0	74.5	2.2	175
2441	Conduit Systems	39.0	-5.0	13.5	2.3	18

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-7, released January 22, 1988, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
NEW JERSEY BELL TELEPHONE COMPANY

Effective August 1, 1988

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	Motor Vehicles	5.4	12.0	33.7	10.1	-345
2113	Aircraft	4.5	31.0	34.7	7.6	-20
2115	Garage Work Equipment	6.6	0.0	30.8	10.5	-14
2116	Other Work Equipment	6.3	0.0	40.5	9.4	-198
2121	Buildings	32.0	3.0	25.7	2.2	-1583
2122	Furniture	13.9	1.0	22.1	5.5	213
2123	Office Equipment - Ofc Supp	4.8	8.0	20.8	14.8	199
2123	Office Equipment - O. C. E.	5.1	3.0	39.8	11.2	0
2124	General Purpose Computers	3.5	7.0	38.5	15.6	0
2211	Analog Electronic Switching	9.6	1.0	31.4	7.0	12829
2212	Digital Electronic Switching	12.8	3.0	9.6	6.8	278
2215	Electro-Mechanical Switching	-	-9.0	-	-	- *
2220	Operator Systems	7.9	3.0	64.1	4.2	99
2231	Radio Systems	10.0	-5.0	37.3	6.8	-69
2232	Circuit Equipment - Analog	7.2	-4.0	40.1	8.9	6384
2232	Circuit Equipment - Digital	8.7	4.0	31.1	7.5	6435
2232	Circuit Equipment - DDS	5.7	0.0	50.1	8.8	0
2351	Public Telephone	6.2	3.0	43.0	8.7	217
2362	Other Term Eqpt - PBX Other	4.4	-3.0	60.6	9.6	0
2362	Other Term Eqpt - PBX -DDS	4.3	-1.0	92.8	1.9	0
2362	Other Term Eqpt - Tel & Misc	1.8	3.0	76.7	11.3	0
2411	Poles	25.0	-89.0	57.2	5.3	3505
2421	Aerial Cable - Subscriber	16.2	-14.0	36.8	4.8	19706
2421	Aerial Cable - Trunk	11.2	-2.0	20.1	7.3	177
2422	Underground Cable - Trunk	16.9	-4.0	34.3	4.1	2052
2422	Underground Cable -Subscriber	23.0	-28.0	27.4	4.4	5680
2423	Buried Cable	18.9	-7.0	24.6	4.4	2681
2424	Submarine Cable	11.5	-10.0	63.0	4.1	39
2426	Intrabuilding Network Cable	13.7	-14.0	2.9	8.1	0
2441	Conduit Systems	45.0	-5.0	23.7	1.8	3691

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued for all accounts except for Electro-Mechanical Switching as indicated below.

* As described in paragraph 21 of the Order, the net service value for the Electro-Mechanical Switching Account is to be amortized over an eighteen month period ending January 31, 1990.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
PACIFIC BELL

Effective January 1, 1989

	Rate Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate	Annual Amort. Expense
		(years) A	(%) B	(%) C	(%) D=(100%-B-C)/A	($000) E
2112	Motor Vehicles	5.1	18.0	25.2	11.1	53
2114	Special Purpose Vehicles	4.7	51.0	27.2	4.6	0
2115	Garage Work Equipment	6.0	1.0	27.2	12.0	2
2116	Other Work Equipment	8.3	1.0	27.2	8.7	27
2121	Buildings	38.0	1.0	9.2	2.4	-15621
2122	Furniture	12.4	3.0	15.5	6.6	606
2123	Office Support Equipment	7.1	3.0	15.6	11.5	133
2123	Company Comm. Equipment	5.1	-1.0	34.1	13.1	-1519
2124	General Purpose Computers	3.5	3.0	44.1	15.1	0
2211	Analog Electronic Switching	9.6	5.0	27.6	7.0	32042
2212	Digital Electronic Switching	12.5	5.0	16.2	6.3	11688
2215	E-M Switching - Step-by-Step	4.9	-10.0	78.3	6.5	0
2215	E-M Switching - Crossbar	4.5	-6.0	48.5	12.8	0
2220	Operator Systems - Crossbar	5.9	0.0	37.9	10.5	0
2231	Radio Systems	8.2	-4.0	35.5	8.4	1336
2232	Digital Data Systems	5.7	-4.0	37.2	11.7	1687
2232	Digital Circuit-Other	7.6	1.0	31.1	8.9	27614
2232	Analog Circuit-Other	6.4	0.0	37.0	9.8	19581
2351	Public Telephone	4.1	8.0	44.6	11.6	-170
2362	Other Terminal Equipment	3.4	-3.0	53.5	14.6	-1065
2411	Poles	19.5	-86.0	53.4	6.8	6382
2421	Aerial Cable-Exchange	14.1	-15.0	34.8	5.7	31385
2421	Aerial Cable-Interofc	6.1	-18.0	70.9	7.7	1853
2422	U. G. Cable-Exchange	19.3	-12.0	26.5	4.4	25657
2422	U. G. Cable-Interoffice	12.9	-3.0	30.4	5.6	7530
2423	Buried Cable-Exchange	17.4	-8.0	31.4	4.4	14087
2423	Buried Cable-Interoffice	10.9	-4.0	39.4	5.9	2349
2424	Submarine Cable	5.9	4.0	78.1	3.0	452
2426	Intrabuilding Network Cable	12.0	-15.0	27.0	7.3	0
2431	Aerial Wire	5.3	-39.0	37.0	19.2	-1215
2441	Conduit Systems	46.0	-24.0	18.6	2.3	5759

The figures in Columns B, C, and D are percentages of gross book cost.

The reserve level in Column C is used to calculate the depreciation rate and does not necessarily reflect the book reserve. The amortization amounts in Column E, ordered in FCC 88-14, released January 21, 1988, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
PACIFIC NORTHWEST BELL TELEPHONE COMPANY - IDAHO

Effective January 1, 1988

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A	Annual Amort. Expense ($000) E
2112	Motor Vehicles	3.9	17.0	37.6	11.6	-21
2114	Special Purpose Vehicles	10.0	12.0	0.0	8.8	0
2115	Garage Work Equipment	10.0	12.0	37.0	5.1	-2
2116	Other Work Equipment	10.0	12.0	36.3	5.2	-11
2121	Buildings	30.0	-1.0	25.9	2.5	46
2122	Furniture	11.7	3.0	20.8	6.5	4
2123	Office Equipment	6.1	4.0	19.6	12.5	1
2123	Company Comm. Equipment	4.7	1.0	44.5	11.6	0
2124	General Purpose Computers	3.5	0.0	39.1	17.4	0
2211	Analog Electronic Switching	9.3	3.0	31.7	7.0	67
2212	Digital Electronic Switching	16.0	3.0	6.8	5.6	0
2215	Step By Step Switching	1.4	-6.0	67.3	27.6	0
2215	Crossbar Switching	1.4	-1.0	74.3	19.1	0
2220	Operator Systems	8.4	3.0	23.9	8.7	0
2231	Radio Systems	7.8	0.0	61.1	5.0	2
2231	Circuit DDS	6.8	-4.0	38.4	9.6	0
2232	Circuit Equipment	7.5	6.0	31.1	8.4	-23
2351	Public Telephone	3.2	1.0	57.6	12.9	0
2362	Large PBX-DDS	4.5	1.0	52.3	10.4	0
2362	Large PBX-Other	4.7	1.0	62.1	7.9	0
2411	Poles	10.6	-51.0	52.1	9.3	38
2421	Aerial Cable	13.1	-16.0	33.0	6.3	15
2422	Underground Cable	20.0	-1.0	26.4	3.7	30
2423	Buried Cable	20.0	-2.0	23.6	3.9	10
2424	Submarine Cable	23.0	0.0	45.4	2.4	-1
2426	Intrabuilding Network Cable	13.4	-4.0	30.9	5.5	0
2431	Aerial Wire	5.1	-51.0	-51.2	39.6	-5
2441	Conduit Systems	47.0	-7.0	19.4	1.9	6

The figures in Columns B, C, and D are percentages of gross book cost.

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